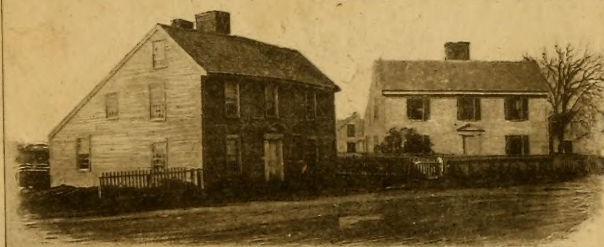




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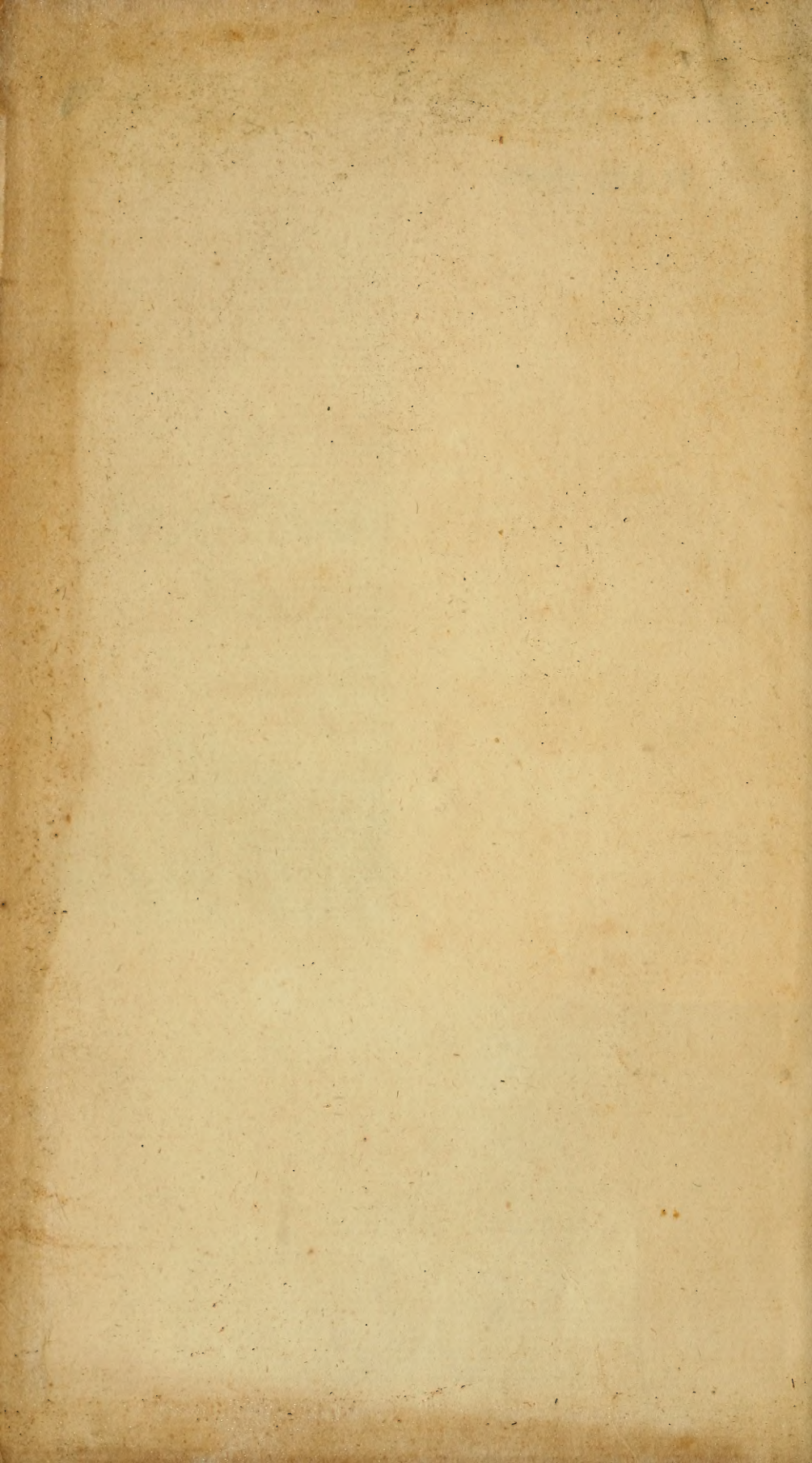
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ADAMS

253.14

v. 3



Instructor Clericalis :

The Third Part.

BEING A
COLLECTION
OF
Choice and Useful Precedents
FOR
PLEADINGS,
BOTH IN THE
King's-Bench and Common-Pleas :
VIZ.

- I. In Twelve several Branches of *Abatement*, and Judgments thereon.
- II. In Ten General Bars to the Action.
- III. Special Bars in *Cafe*, (*viz.*) Slander, *Assumpsit*, Disturbance, Misfeasance, Malefeasance, Negligence Trover, Deceit, Nuisance, Rescue and Escape; with the Pleading of *Unconscionable Price*, or *Adhuc Paratus*.
- IV. Bars in *Covenant*, with Averments, Protestations, Traverses and Pleas after the last Continuance; and also many special Rules concerning the Bar, Replication, Rejoinder, Surrejoinder, &c. Methodically digested into Rule and Precedent, for the farther Instruction of young Clerks.

By R. G. a Clerk of the Court of Common-Pleas, *Useful for the Clerks and Attornies of the same Court and King's-Bench, &c.*

The Fourth Edition with Additions.

In the SAVOR:

Printed by E. and R. NUTT, and R. GOSLING, (Assigns of Edw. Sayer Esq;) for H. Maltby in the Middle-Temple-Cloysters. MDCCLXXIV.

* ADAMS 253.14

v.3

TO THE
READER.

IT is needless to recommend a Book of this Nature, by telling how much the Learned in all Times have advised others to the Study thereof: There is scarce a Book of Pleadings extant, but makes mention of the Advice of Littleton, and the Commentary of the Lord Coke thereon. The many Benefits that occur from the Knowledge and right Use of Pleading, are no less known to the Sages of the Law, than are the many Mischiefs which happen by the Contrary. And if the many Causes that are lost through Mispleading, and the several Advantages that are slip'd through Ignorance of Time and Matter, be duly consider'd: then it will certainly appear, that this Book is come forth in a proper Time, and for a publick Advantage. There is not any Branch belonging to the great Body of our Law, that is attended with so many Accidents as that of Pleading: Therefore well may

To the Reader.

good Pleading be recommended, and Littleton's Advice to his Son followed; which is, To employ his Courage and Care to learn the Science (as he properly observes it) of Well Pleading.

The Books of Precedents for Pleadings, that have been hitherto published, are many in Number, some of which contain many long and unnecessary Pleas, little useful, and others of them are obsolete. The Method of this Book is wholly New; the Precedents carefully collected; the Rules and Directions plain and easie; wherein I have much enlarged, and that it may be more useful to those for whom'tis chiefly intended: And thereby have endeavoured to make it the most Compleat of any yet extant. Being chiefly thereto encouraged, from the general Acceptation the first Impressions of this Book has hitherto met with; I therefore gladly subscribe my self,

Your Servant, &c.

R. G.

O F

1

O F
P L E A S
A N D
P L E A D I N G S.

PLEADINGS largely taken, are all the Sayings of the Parties to Suits or Actions, after the Count or Declaration; as,

Pleas in Abatement.

Bars.

Replications.

Rejoinders.

Surrejoinders.

Rebutters.

Surrebutters, &c.

And every Plea must be pleaded either in Bar to an Action brought, or in Abatement of the Writ, Pleaint or Count, upon which the Action is brought, (unless the Defendant

Plea in Bar
what

dant admit not the Jurisdiction of the Court, in which Case he ought first to take that Advantage.)

Peremptory. A Plea in Bar to the Action brought, is said to be either Peremptory and Perpetual, and will for ever overthrow the Plaintiff's Actions:

Temporary. Or else Temporary for a Time only, but afterwards may cease or fail; as *Plene Administavit* is a good Plea, until it appears that more Goods came to the Executor's Hands.

Replication. A *Replication* is an Exception of the Second Degree made by the Plaintiff to the Defendant's Plea or Bar.

Rejoinder. A *Rejoinder* is the next Degree, which follows the *Replication*, and is the Defendant's Exception or Answer to the Plaintiff's *Replication*.

Surrejoinder *Surrejoinder* is a Second Defence of the Plaintiff's Action, opposite to the Defendant's *Rejoinder*.

Rebutter. If the Defendant answer any further, 'tis called a *Rebutter*. And,

Surrebutter. The Plaintiff's further Answer thereto, is called a *Surrebutter*: And it may sometimes happen a *Demurrer*, and *Joinder in Demurrer*, to follow these.

Advantage of Pleading in Abatement. But it is further to be noted, That the Defendant may many Times have Advantage of the Plaintiff by Pleading in Abatement, *i. e.* to cease the Plaintiff's Suit for that Time; and this requires a special Observation: For as there are some Things, which often come between the Declaration and the Plea in Bar; as *Dies Datus*, Continuance, Imparlance, &c.

As

As in 19 H. 6. which says, a *Dies Datus* is a Day given by the Court for the Appearance of the Party, and is before the Count, and an *Imparlance* is always after the Count.

So these Pleas in Abatement must generally come between the Declaration and Continuance, &c. otherwise the Defendants Advantage will be quite lost, especially in the following Cases. As, The Time when to be observed.

1. Where the Plaintiff, being an Infant, doth not come by his Guardian.
2. Where the Plaintiff doth not name those that have Right with him, as Executors, Jointenants, &c.
3. Where the Plaintiff sues in more Names than he should.
4. Or where he sues with others, as are not in *rerum natura*.
5. When the Plaintiff is excommunicated or outlaw'd.
6. When the Defendant can prove he tendered the Money at the Day, & *adhuc paratus*, ——— &c.

All these Pleas in Abatement ought to be pleaded the same Term before a General Imparlance, and to have Counsel's Hand to them. To be pleaded the same Term.

And Note also, That a direct Appearance or Continuance only (as is before hinted) may be a Detriment to the Defendant, as in Case of *Misnomer*, where the Defendant is misnamed; and therefore the Way in such Case is to appear specially in this or the like Manner, viz. *A. B. qui implicat̃ p nomen A. C. complit & habet diem, vel petit licentiam* Special Appearance.

centiam interloquendi, vel petit visum,
 Et. Salvis sibi omnibus advantagiis,
 Et.

Impar lance. And regularly after an *Impar lance General* (though one may plead in Bar, or to the Action) he cannot plead to the Jurisdiction of the Court, *Misnosmer*, or to the Writ, or in Abatement of it, nor any Privilege or Disability (except the Thing happen after the Continuance, and it be abated as by Death); so neither then ought the Defendant to have Oyer of a Deed except he plead Variance, or that the Writ was brought in another County; and though the Defendant need not plead to a Declaration on a Bond before he hath Oyer of it, yet he may plead without Oyer if he please, but then he cannot afterwards waive his Plea and pray Oyer. *Kitch. 200. Pract. Reg. Tit. Oyer.*

Special Impar lance. However, upon a *Special Impar lance* it is otherwise, for thereby the Defendant saves his Advantage, as well to the Writ as to the Declaration, by the Words, *Salvis sibi omnibus & omnimodis advantagiis tam ad Breve quā ad Narrationem*; and sometimes thus, *Salvis sibi omnibus advantagiis tam ad Jurisdictionem Curie quā ad Breve & Narrationem*, as the Case is.

And though the *General Impar lance* be of Course, yet this *Special Impar lance* must be by Rule or Order of Court, or by Consent at least.

Yet it is said, that after a *General Impar lance*, one may plead *Joitenancy*, *Nontenure*, and the like, whereof he is not estopped by his Appearance. 9 Ed. 4. 36.

.Also

Also it is said to be Practice, That if no *Impar-
lance* appear upon Record, he may plead in
Abatement, &c. And if a *Special Impar-
lance* be prayed, the Plaintiff's Attorney takes of the
Defendant's 2 s. for the Entry thereof. *Vide*
Compl. Att. & Sol pag. 38, & 294.

From this it appears, That if the Defendant will take his Advantage, and plead in *Abate-
ment*, regularly he must plead it before a *Gene-
ral Impar-
lance*. And it is to be further obser-
ved, That in good Order of Pleading, a
Man ought to plead,

The Time
and Order
of Pleading.

1. To the Jurisdiction of the Court.
2. To the Person of the Plaintiff, and next
of the Defendant.
3. To the Count or Declaration.
4. To the Writ.
5. To the Action of the Writ.
6. To the Action it self, in Bar thereof.

1. A Plea in Abatement to the Jurisdiction of the Court, is called a *Foreign Plea*, because it either alledges, That the Matter ought to be tried in another Court, or else refuses the Judge as incompetent, for that the Matter in Question is not within his Jurisdiction. *Kitch. fol. 95.* As *Ancient Demesne, County Palatine, Cinque Ports*, Pleas to the Palace Court of *Westminster*: and other inferior Courts, not having Cognizance of the Cause, &c.

To the Jurif-
diction of
the Court.

2. Pleas to the Person have been formerly accounted Six, as *Villinage, Utlary, Alien, Out
of Protection, Professed in Religion, and Excommu-
nication*, (though it's said *Profession* or *Alien* may also be pleaded to the Action;) and others say, That to plead *Foreign Profession*, is no Plea at this Day.

To the Per-
son.

3. Pleas

To the Count
or Declara-
tion.

3. Pleas to the Count or Declaration are, *Variance between the Writ or Count, Specialty or Record, Incertainty in the Plaint or Count, &c.*

Pleas to the
Writ.

4. Those to the Writ are, for *Variance between the Writ and Register, Incertainty, Death of Parties, Misnomer, Joinder, Non tenure, Non habetur aliqua talis Villa*, and the like, and many Times to the Writ and Bill or Count together.

And it is to be noted, that generally the Cause of Abatement of Writ, Plaint or Count, are either.

1. By the Act of God, as where the Plaintiff or Defendant are dead.
2. Or by the Act of the Party, as when there appeareth in the Writ or Declaration, or both, Want of sufficient and good Matter.
3. Or when (though it be good) it is not certainly alledged.
4. Or the Name of the Plaintiff or Defendant, or Place, is mistaken.
5. Or there be Variance between the Writ, Specialty or Record.
6. Or apparent Repugnancy.
7. Or Incertainty in the Writ, Count or Declaration. 18 Ed. 3. 27.

To the Ac-
tion of the
Writ.

5. Pleas to the Action of the Writ are said to be such, as where one pleadeth some Matter, by which he sheweth the Plaintiff had no Cause to have the Writ which he brought, but it may be some other Writ; and it's said, the Defendant may choose either to conclude to the Writ, or to the Action of the Writ. 26 H. 8, Bro. Brief. 409.

6. A Plea or Bar to the Action it self, is where the Defendant in any Action pleadeth a Plea, which is a sufficient Answer to destroy the Action of the Plaintiff; and may come, and generally does, after a Continuance or General Impar lance.

In Bar of the Action.

But *Note*, That if the Defendant first pleads a Plea that doth tend to the Destruction of the Action for ever, he shall not be admitted after to plead in Abatement of the Writ; and yet if there appear Matter in the Record, for which the Writ ought to be abated, then it's said the Defendant may shew it to the Court in Arrest of Judgment.

First, By — Abatement to the Jurisdiction of Courts.

¶ **E**t predictus N. per C. D. Actorum suum venit & dicit quod Curia Regis placitum de transgredendo predicta cognoscere non debet Quia dicit quod locus in quo supponitur transgrederi illam fieri est & predicta tempore transgrederi illius fieri supponitur fuit viginti acce terre cum pertinentiis vocat N. in S. predicta. Que quidem viginti acce terre cum pertinentiis sunt & predicta tempore quo, &c. necnon a tempore cujus contrarie memoria hominum non existit fuerit infra penerit Ville de D. in Com predicta Que quidem Villa est & a toto eodem tempore fuit infra libertatem Quingue Portuum infra quam quidem libertatem B. D. D. Regis non currit nec

For that the *Locus in quo* is within the Liberty of the Cinque Ports.

nec a tempore cuius contrarie memoria hominum non existit currebat sed quod omnes transgressiones conventiones & contrarius facti sive emergentes infra libertatem illam sunt & a toto tempore supradicto fuerunt determinabilis & determinat coram Balliis & Juratis D. predicti per duodecim homines ad hoc summonitos & iuratos Et hoc paratus est verificare per Curiam, &c. Unde non intendit quod Curia Regis hic placitum illud cognoscere velit, &c. See *Brownl. Red.* 475. 2 *Mod. Intrad.* 2. *Han. Ent.* 103.

After Imparlance, one shall not plead to the Jurisdiction of the Court. 22 *H* 6.7. 21 *Ed.* 4.23.

Vide Co. Lit. 303, a. Such Pleas ought to be at first, or otherwise the Party shall lose his Advantage.

For that the Lands are only pleadable in the Crown of the Manor.

¶ **E**t per Def. per J. S. Attorn suum veni & defendi vim & injuriam & peto iudicium de villa quia dicunt quod per locus vocat, (&c.) & omnia alia terra & tenementa in Manerio per tenentur de Domino Villa tertio nunc Rege Angli, &c. quod omnia terra & tenementa de eodem Manerio sunt & a tempore cuius contrarii memoria hominum non existit fuerunt in Curia Manerii illi & non aliter placitatur & placitabilis unde peto iudicium & Curia Domini Regis hic placitum per in hoc casu cognoscere velit, &c.

Repl.
That they are pleadable at Common Law.

¶ **E**t per Quer. dicunt quod villa sua predicta ratione pallegat' Cassari non debet quia dicunt quod locus per vocat, (&c.) est & a tempore cuius contrarii memoria hominum non existit fuit de, (&c.) in Com per

ad p[ro]fitabilē ad Commune[m] Legem Anglie & non in Cur[ia] Manerii p[ro]ut p[ro] def. Superius allegabit. Et hoc petit q[uo]d inquiratur per Patriam, &c. See Bro. Red. 504. Thomp. 2. 2 Mod. Intr. 2.

Note, If upon such a Plea in Abatement the Parties go to Issue, and it be found against the Defendant, it is peremptory, and he shall lose the Land; but upon a Demurrer to such a Plea it is not so, but a Respondi Ouster. 22 H. 5. 25. b. 5 Co. 111. Yelz. 112. Vide Postea.

ff. **E**T p[ro] A. p[ro] B. H. Attor[um] suū veni & For that the Lands are held in Ancient Demesne after special Imparlance; but *quare* of this.

salvis sibi omnibus & omnimodis advantag[is] & exceptiō[n]ib[us] ad billam p[ro] petit licentiam inde interloquendi & ei conceditur, &c. Et super hoc dies inde dat est partibus p[ro] coram Domino Rege apud Westm[onasterium] usq[ue] diem, (&c.) p[ro] post, (&c.) videlicet p[ro]fat[us] A. ad billam p[ro] interloquendi & tunc ad respondendi, &c. ad quem diem coram Domino Rege apud Westm[onasterium] veni tam p[ro] W. quam p[ro] A. per Attor[um] suos p[ro] & idem A. dicit q[uo]d Dominus & cū in narratione p[ro] specificat sunt parcelle Manerii de D. in Com[itatu] D[orset] & tenentur de eodem Manerio q[uo]d quidem Manerium est de Antiquo Dominico Cozone Domini Regis nunc Anglie, &c. q[uo]d omnes actiones p[er] aliqua transg[ress]i facti sive perpetrati in & super eisdem domo & c[ir]ca in Cur[ia] ejusdem Manerii & non alibi a tempore cujus contrariū memoria hominum non existit triari & terminari debuer[unt] nisi fuer[it] & consuever[it] hoc

hoc parat est verificare put Cur. (Ec.)
 Cons unde non intendit qd Cur Dnd
 Regis hic plicum inde cognoscere velit,
 Ec. See 2 Mod. Intr. 2. Bro. Red. 504. & Repl.
 quod tenent. feodo ad Com. Legem. See also
 1 Brownl. Ent. fol. 2. Thomp. 2 & 347. first Part
 Mod. Intrand. 249. Winch. En. 517. Et Repl. quod
 proavus quer. tenuit tenent. de Rege ut de Castro de
 W. in libero Soccagio, Ec. & vide Rob. Ent. 250,
 348.

How the De-
 fendant
 ought to
 make his
 Defence.

Note, That the Manner of the Defendant's De-
 fence in Pleading is to be consider'd; for
 it is held, that in Pleas to the Jurisdiction,
 or the Person, the Defendant cannot make
 above half a Defence, as thus Et pñ M. p
 J. S. Attorn suū veni & defendit vim
 & injuriam, without adding the Words,
 quando, Ec. (which Words make a whole
 or full Defence.) And by adding these
 Words, the Jurisdiction of the Court and
 Ability of the Person are admitted. See
 7 H. 6. 35 H. 6. vide Pract. Reg. pag. 244.

Half De-
 fence.

Also in Affize, Dower, Darrein Present-
 ment, Mortdancestor, p que servitia, At-
 taint, & Scire facias, the Defendant shall
 only say venit & dicit, without other De-
 fence. 34 H. 6. 33. 46 Edw. 3. 23. Bro. A-
 bridg. tit. Defence, Numb. 67.

Special full
 Defence.

Note, also, that a full Defence is sometimes
 special. For,

In Praeipe
 quod reddat,
 Ec.

In every Praeipe qd reddat, Writ of In-
 trusion, Ayel and Escheat, and the like, the
 Manner is thus, Venit & defendit jus suū
 quando, Ec.

Double De-
 fence.

And it seems, that in a Writ of Right the
 Defendant ought to make double Defence,

to

to wit, of the Plaintiff's Right and his own.

1 Cro. 311.

In Actions upon the Statutes of Maintenance, Labourers, and the like, and in *Recapitione averiorum*, the Defence is thus, *Venit & defendit vim & injuriam quando, &c. & quicquid, &c.*

In Actions,
Sur Stat.

And in Prohibition upon Stat. *Ric. 2.* and *H. 4.* the Form is thus, *Venit & defendit vim & injuriam quando, &c. Et omnem contemptum & quicquid, &c.*

In Prohibition.

And in Appeal of Mayhem, thus, *ven' & defend' vim & injuriam, Et omnes felonias & appella de Mayhemis, Et quicquid quod est contra pacem Und' Regis Coronam & Dignitat' suas. 40 Ass. 9.*

In Appeal.

But in Actions of Account, Case, Covenant, Debt, Detinue, Ejectment, Partition, *Parco fracto*, *Quare Impedit*, *Replevin*, *Rescous* and *Waste*.

Ordinary full
Defence.

And in all Actions where Debt and Trespass are given by the Statute. In all Actions of *Trespass de Clauso fracto*, or *de Clauso & Domino fractis*, with their Incidents, or for Battery, False Imprisonment, Menacing, and other personal and mix'd Actions, the Defendant shall make the ordinary full Defence, *Venit & defendit vim & injuriam quando, &c.* that is, *quando ubi & quomodo Cui' videbitur. Co. Lit. 127. Bro. tit. Defence, 53, 30, 31, 45, 45.* and so in all other Cases, where you are to defend the Wrong supposed by the Plaintiff. *Telv. 210.*

The Vouchee shall make his Defence thus, *Et p'd N. B. ut Tenens p' Warrantiam suam defend' jus suum quando, &c.*

Vouchee's
Defence.

And

And *note*, That where this ordinary full Defence ought to be made, if it be omitted 'tis no Mistake of the Clerk, but failing in Substance. *Yelv.* 210.

But *Note*, in 2 *Lut.* 1590, &c. in C. B. the Defendant begins his Plea without any Defence, viz. *Et p̄d J. p̄ C. W. Attorn suū veni & p̄r auditū hūis, &c.* And then pleads in Abatement to one Part of the Narr. because it appeared by the Narr. that the Writ was brought before the Cause of Action, &c. and *Non Assumpsit* to the other Part. Plaintiff demurs, and as to the Exception that there was no Defence made, the Court said it was only Matter of Form, and the Chief Justice said he had spoken with all the Justices of the *King's Bench* concerning that Defect; and they told him it was a trifling Thing, and *See* 1 *Lut.* 7, &c. *Inter Walford and Savile*, where it was adjudged a good Plea without Defence upon a special Demurrer, *Et quod p̄d C. in plito suo p̄dict nūll fecit defensionem, &c.* And this Cause was over ruled by Reason of the many Precedents which are so, altho' (as the Reporter observes) there are many other Defences; and he adds, that the sure Way is to make Defence in this Manner, *Den' & defendū vīm & injur'*, without saying more. *Vide* 1 *Lut.* 8, 9.

Where Two
make a joint
Defence.

Also where Two Defendants join in Defence, they ought not to sever in Pleading. 1 *Cro* 311.

Proper Con-
clusion.

Also each Plea ought to have its proper Conclusion; as a Plea to the Writ to conclude to the Writ, Plea in Bar to conclude to the Action, and an Estopple to rely on the Estopple, and so

so of the like. *Co. Litt.* 303. Of which more hereafter.

And it is said, that such Places as have special Grant not to be impleaded elsewhere, there they conclude Judgment *de Brevi*, Judgment *de Brevi*, and shall not conclude to the Jurisdiction. *8 H. 6.* 18, 19.

Also, where the Defendant's Plea doth prove that the Plaintiff may have another Writ in the same Court, there it's said he shall conclude to the Writ and not to the Jurisdiction. *38 H. 6.* 19.

And in Pleas to the Action of the Writ, it's said the Defendant may choose either to conclude to the Writ, or to the Action of the Writ. *26 H. 8. Bro. Brief.* 409. *9 Edw. 4.* 31.

And *37 H. 6.* 48. In forcible Entry, if the Defendant pleads to the Writ, and concludes to the Action, he shall be condemned, because by his Conclusion he hath admitted the Writ to be good, and so he shall be, if he plead to the Jurisdiction, and conclude to the Writ.

And by *Prisott*, *37 H. 6.* 24. If the Plea be in Bar, and the Conclusion to the Writ, it shall be taken in Bar. See *34 H. 6.* 1, 2. & *36 H. 6.* 17. because he cannot have a good Writ, if he be barr'd of his Action.

The Effect of the Pleas to the Jurisdiction.

These Pleas to the Jurisdiction of the Court, if true, prevent the Cause to be tried there.

As to plead the Lands in Question, are ancient Demesne, and ought to be pleaded in the Court of the Manor which they are holden: and if they so be, this will abate the Writ before or after Answer. *F. N. B. fol.* 14. d. *128. a.*

ForeignPlea. So also will the Foreign Plea, which refuses the Judge as incompetent, because the Matter in Hand is out of his Precincts ; but in this Case the Court doth usually make the Defendant swear his Plea to be true, or else will enter up Judgment for Want of a Plea. *Vide Kitch. fol. 75. Pract. Reg. p. 232.*

Defendant swears to it.

Note, If one pleads to the Jurisdiction of the Court, he ought to give Jurisdiction to another Court. 2 H. 7, 16, 17.

If one pleads to the Jurisdiction of the Court, he shall not oust the Court of Jurisdiction by another Plea afterwards. 22 H. 6. 18, 19.

And if another Court ought to hold Plea, the Party ought not to conclude to the Writ, but to the Jurisdiction. 38 H. 6. 18.

After a Day given over by *Supersedeas*, there ought to be another *Supersedeas* to the Jurisdiction. of the Court. 22 H. 6. 18, 19.

Every one that pleads in Disability of the Person of the Plaintiff, or Demandant, affirms the Jurisdiction of the Court and therefore cannot afterwards plead to the Jurisdiction. 35 H. 6, 12.

For that the Cause of Action accrued in a County Palatine.

N. E T pzet N. p J. S. Attorn' suum ven' & defendi vim & injuriam Et dic qd Com Cestr' est & a toto tempore ejus contrae memoria hominum non existit fuit Com Palatin' Qdq omnes & singula placita & actiones tam reales qm personal' infra eundem Com emer- gen' a toto tempore supradicto placitat & placitabil' fuer' & existunt infra eund Com'

Com' Cestre coram Justic ibm pro tempore existend & non alibi ad Com' Regem extra eundem Com' Valentinum, Et hoc parat est verificare prout Cur' &c. unde ex quo Causa Action' pred' emergit infra Com' Cestre' pred' idem A. per Audic si Cur' hic placitum inde ulterius cognoscere velit, &c. Vid. Bro. Vad. Mecum 473. & Rob. Ent. 1.

Plea to the Jurisdiction of the Marshal's Court, &c.

ff. **E**t pred' C. in pp'd persona sua veni C. ad's A. in Et die qd Cur' hic plitum pred' ul- Deb'o, &c. terius cognoscere non debet quia die qd Causa Action' pred' (si qua eidem A. accrebit) accrebit eidem A. extra Jurisdiction' hujus Cur' videlt infra C'ibit' Lond in Com' ejusdem C'ibit' & non apud Southmark in Com' Surr' vel alibi infra Jurisdiction' hujus Cur', Et hoc idem C. parat est verificare Unde per Audic si Cur' hic plitum ill' ulterius cognoscere velit, &c.

To this Plea there must be a Counsel's Hand, and the Defendant must swear the Truth of his Plea in Court. But if the Defendant be not in Custody, or else special Bail put in, this Plea will not be allow'd altho the Defendant appear in Court. See the Jurisdiction of the Admiralty-Court plead- ed. *Clif.* 17.

See for more Precedents on this Head of Abatement to the Jurisdiction. *Rast.* 58, 101, 419, 379. *Ashton* 265, 352. *Hern* 7. 733.

Thompson 13, 14, 15. 1st of Brown, fol. 2. Num. 6, 13, 14. 2 Mod. Intr. p. 1. Of Abatement to the Jurisdiction.

2ly. By Abatement in Disability of the Plaintiff.

That the Plaintiff is an Alien, born of the King's Enemies, &c.

N. **E**t dicit qđ pđ Quer' ad breve suum p̄d̄ respond̄ non debet Quia dicit qđ idem Quer' est Alienigena natus in Regno sub ligeantia Regis Gallie Adversar' Dñi Regis nunc de Patre & Matre Inimicis ipsius Regis Angl' & eidem adversar' suo adheren' oriundus & ingressus in Regn' Angl' absq; salvo conductu ipsius Dñi Regis nunc, Et hoc paratus est verificare ubi quando & put Cur' Dñi Regis hic considerabitur Unde pet' Judic' si p̄d̄ Quer' ad breve suū p̄d̄ responderi debeat, &c.

Repl.

Et p̄d̄ Quer' dicit Qđ ipse per aliqua (&c.) p̄cludi non debet Quia dicit qđ ipse est indigena in Regno Anglie sub Ligeantia dñi Regis Anglie de Patre & Matre Amicis & subdit' eidem Dño Regi Oriundus & nat' apud (&c.) Et non Alienigena put p̄d̄ Def. supius allegabit. Et hoc pet', (&c.) Vide Clerk's Assist. 113. 2 Mod. Intr. 3 Clift. 4.

Note, If an Alien Enemy brings an Action Real Personal or Mix'd, in his own Right, the Defendant may plead it in Abatement, in Disability of his Person, or in Bar to the Action; and the Defendant ought to aver that the Plaintiff is an Alien, born at such a Place, under the Allegiance of such a Prince, who is
Enemy

Enemy to the Queen. But an Alien Friend, as he may traffick, and have a House for a Habitation, so he may have an Action Personal and Trespass for breaking his House, (and he may have a Writ of Error upon Necessity, as when he is condemned in an Information) but not real or mix'd Actions: And it is the Lord Coke's Opinion, That if an Alien Friend brings such an Action, it ought to be pleaded in Disability of his Person, and not to the Writ, or to the Action,——But if he be an Alien Enemy, the Defendant may conclude to the Action. *Co. Litt. fol. 130. b. Vide 1 Saund. fol. 5. &c.*

Also an Alien may be an Administrator, and as such may have Leases for Years, as well as Personal Chattels and Debts. *Cro. Eliz. 683. Cro. Car. 8, 9.* Alien Administrator.

And it is said, that an Exception taken to a Writ, *Propter defectum Nationis vel potius defectum Subjectionis vel Uigeancie*, is peremptory; so that the Action cannot be revived by Peace or League subsequent. The Exception is peremptory.

And that the King may grant Licence to Aliens to implead, and also that such Aliens as come into the Realm by the King's Licence, or Safe Conduct, may use Personal Actions by Writ, though they be not made Denizens.

And that Denizens lawfully made by the King's Grant, and such Aliens born as are within the express Words of the Statute of 25 E. 3. may use Actions Real by Original Writ. *See 32 H. 6 23. Digest. de Briefs, lib. 1. cap. 6, 7 Co. 1. Co. Litt. 129. a. 130. b.*

It is said, that to plead the Plaintiff is an Alien, is a Plea to the Action; yet where the Defendant concludes to the Person, as he may, he may afterwards demand the View. 3 H. 6. 55.

By 32 H. 6. 23. If one pleads that the Plaintiff is an Alien, he may conclude to the Person, or to the Action at his Pleasure.

To an Action for Scandalous Words, 'tis no Plea that the Plaintiff is *Alienigena natus in partibus transmarinis extraligeant Domini Regis, &c.* Yelv. 199. 1 Bul. 134. Vide 1 Lut. 34. Defendant pleads, That the Testator was an Alien. *Replication*, That the Testator at the Time of making of the Bond, and at all Times afterwards by the King's Licence and Protection was in *England, &c.* Demurs thereupon, and Judgment *Quod respondens ouster.*

For that the Plaintiff is excommunicated.

ff. **E**t predicta A. B. per C. S. Attorn suum venit & dicit qd predicta A. B. ad breve suum predictum respondere non debet quia dicit qd idem A. excommunicatus existit, Et pferit hic in Cur' litteras patentes venerabilis viri R. P. Sacre Theologie professoris Archidiaconi Ebor' que hoc testantur in hec verba R. P. Sacre Theologie pfeffor Archidinus Ebor' universis Rectoribus Vicariis Curatis ac Clericis quibuscunque in & per totum Archinatum nostrum Eborum ubilibet constitut' salutē, Cum nos (&c.) [recitant l' excommunicacōn' p tout] dat sub Sigillo nostro Archinali primo die mensis Maii Anno Dom, (&c.)
super

super quo idem M. petit qđ loquela pꝛe-
dicta remaneat sine die, &c. Cum hoc
quod pꝛed' M. verificare vult quod pꝛedicta' Averment.
N. in Villa pꝛed' mentionat' & modo
Quer' & pꝛedicta' N. in pꝛed' literis pꝛed'
Episcopi mentionat' est una & eadem per-
sona' & non alia neq; diversa, &c.

See *Thomp. Entries for the like in B. R. fol. 9.*
Plac. Gen. 9, 10. Bro. Red. 100. Vidian 25.
1 Bro. Ent. 5. 2 Mod. Intr. 3. Clift. 13. Repl',
Quod Quer. absolutus est, Placit. Gen. 10, 72, 76.

Excommunication is no Plea after Impar-
lance, if so be it was not after the last
Term that the Imparlance was granted;
9 Ed. 4. 36. a.

When Excommunication is pleaded, you Letters of
shew the Letters Testimonial, that the Party Excommu-
is excommunicated, which ought to be cer- nication to
tified by the Bishop; and if certified by the be shewn,
Commissary or Official, is ill. But the Chan- and who
cellor of an University may certifie Excom- may cer-
munication, and the Direction shall be, *Uni-* tify them.
versis sancte Matris Ecclesie filiis. 1 In- Chancellor.
stit. 131. a. 8 Co. 68. 1 Roll. 183.

So may the Vicar-General when the Bishop Vicar-Gener-
is in remotis agend, and the Warden in ral.
the Vacancy.

The Cause for which he is excommunica- The Cause
ted ought to be shewn, otherwise 'tis ill; and to be shewn.
the Bishop ought to certify that it was in his
own Court, and not in another, or that he
has found Sentence given by another Bishop
but he may certify it to be made by his Com-
missary or Official. *8 Co. 68. 1 Inst. 131. a.*
1 Roll. 434, 884.

The Entry
upon this
Plea.

When such a Plea is allowed, the Entry is,
*Quod loquela remaneat sine die quous-
que, &c.* Co. Litt. Sect. 201. 8 Co. 69.

The Defendant pleaded that the Plaintiff
was excommunicated, *Et pet' qđ loquela
remaneat sine die, &c.*

Plaintiff replies, That he had appealed to
the Sentence, *Et pet' qđ p̄d' Def' re-
spond', &c.*

And the Replication was ill; for it does
not maintain his Action. 3 Bul. 72. 20 H. 6.
25. Rast. Entr. 320. Roll. 226.

Excommu-
nication no
Plea.

Excommunication is no Plea in an Action
brought by *Qui tam, &c.* 12 Co. 61.

See more after. *Et vide* 1 Lat. 17. Def'
*placit' quod Quer' est Excommunicat' per Judges
Delegates.* Demurrer, *Et respond' ouster
Agard quia nul Certificate del Judges
Delegate fuit p̄duce, Et le Plea male
conclude.*

For that the
Plaintiff is a
Popish Re-
cusant.

ff. **E**t p̄d' A. p. (&c.) ven' & defend
vini & injur', &c. Et dic qđ p̄
C. ad h̄vebe & nare' suam p̄d' responderi
non debet quia dicit qđ in Statuto in
Parlamento die Dñi Reg' nunc apud
Westm' in Com' M̄o quinto die Rob
Anno Regni sui Anglie, &c. tertio tent'
edit' (int' alia) inactat' fuit auctoritate
eiusdem Parliamenti quod quilibet Pa-
palis Recusans (Anglice Popish Recusant)
qui fuit aut foret convictus in papali
recusantia (Anglice in Popish Recusant)
staret & reputaretur ad omnia inten-
tiones & proposita (Anglice Purposes) dis-
habilitatus (Anglice disabled) ut persona
legitime

legitime & debite excommunicat' ac quasi ipsa fuisset denunciat' excommunicat' secundum leges hujus Regni Anglie quousq; ipse vel ipsa sic disabilitat' seipsum vel seipsam conformaret & ad Ecclesiam accederet & Divinum Servitium audiret & Sacramentum Cene Domini reciperet secundum leges hujus Regni Necetiam acciperet Sacram' (Anglice the Oath) appunctuatum & prescriptum in uno alio Actu facto illa ead' Sessione Parliamenti (intitulato An Act for the better discovering and repressing of Popish Recusants) Et quod quilibet persona vel persone secuat (Anglice sued) vel secutand' (Anglice to be sued) per talem personam sic disabilit' ill' placitaret in disabilitatem (Anglice Disabling) talis querentis quasi ipse vel ipsa excommunicat' esset per sentent' in Curia Ecclesiastica put in eodẽ Statuto (int' alia) plenius continetur, Et idem A. ulterius dicit qđ ad Generalem Sessionem Pacis tene apud D. in Com. D. septimo die Aprilis Anno Regni dia' Dom' Regis nunc Angl', &c. quinto & Scotie quadragesimo primo coram R. O. Mil' & Bar' C. S. Mil', (&c.) & al' Soc suis Justie die Vñi Reg' ad Pacem in eodem Com' D. conservand' necnon ad diversa feloniam transgressionem & alia malefacta in predicto Com' D. perpetrat' audiend' & determinand' assignat' extitisset presentat' qđ p̄dict' C. per nomen C. D. de I. in eodem Com' Gen' (tali die & anno) fuit etatis sexdecim annor' & ultra & non

non accesserat (Anglice, did not repair) Ecclesie Paroch sue nec alicui alie Ecclesie Capelle aut usuali loco communis precationis ad aliquod tempus infra tres menses prime sequen' pzed' (talem diem & ann' supradictos) sed voluntarie & obstinat' abstinuisset ab eisdem (Anglice, had forborn the same) (a pzedicto tali die & anno supradicto) p pzedictum spatium pzedictor' triu mensiu extunc pr' sequen' contra tenorem Statut' in huiusmodi casu nuper edit' & pvisi ac in manifest' contemptu dicti Domini Reg' & legum suorum nec non contra pacem Domini Regis Coronam & Dignitatem suas super qua ad eandem Generalem Sessionem Pacis tent' apud D. pzedictam coram pzedat' Justic' dci Domini Regis die & anno supradictis publica Proclamatio facta fuit iuxta formam Statuti in huiusmodi Casu nuper edit' & pvisi qd corpus pzedicti C. foret redditum (Anglice, rendred) Dic' pzed' Com' D. ante tunc proximam General' Session' Pacis p Com' D. pzedicta tenend' vel alit' convia' foret p obstin' recusant' secundum formam dictor' Stat' in humoi Casu pvisi ad qm quide' pr' General' Session' Pacis tent' pro Com' D. pzed' scilicet ad General' Session' Pacis apud D. in Com' D. pzedicta decimo die Octobris (tali anno) cora pzedat' Justic' dci Dni Regis ad Pacem pzed' C. solemniter exact' fuit & non comperuit sed defaultam fecit & corpus suum pzedat' Dic' Com' D. non reddidit per quod pzedictus C.

de

de transgr' predicta & contempt' predicto unde in forma predicta' indictatus fuit secundum formam Statuti' adtunc & ibidem convictus fuit prout p' Record' inde coram prefat' Justic' ad Pacem apud D. in predicto Com' D. residen' plenius liquet & apparet, Et hoc, (Ec.) Unde petit Judicium si predicta' C. ad huc & narr' suam pred' responderi debeat, Ec. Cum hoc qd idem A. verificare vult quod predicta' C. post predicta' decimum diem Octobris Anno, (Ec.) supradicto & ante diem emanationis hujus original' pre: C. seipsum non conformabit & ad Ecclesiam non accessit nec Divinum Servitium audivit nec Sacram' Cene Dni recepit sedm' leges hujus Regni Anglie, Et cum hoc quod idem A. etiam verificare vult quod pred' Judicium convictionis predicti C. predicti in plenis robore vigore & effectu minime reversionis sive annullatum permanet & existit, Ec. Vide 1 Brown. Ent. 5 Thomp. 185. 2 Mod. Intr. 5. Clift. 3. 11. Bro. Red. 466.

f. **E**t predicta' A. per J. B. Attoyn' suum ven' & Defend vim & injur', Et dicit quod ipse ad villam predicta' Quer' respondere non debet quia dicit quod diu ante predicta' tempus quo supponitur propalation' & publication' predicta' Anglicanorum verborum in Narratione predicta' superius pred' spei quidam C. D. als scilicet Termina Sed Michis Anno Regni (Ec.) in Cur' ipsius Dni Regis apud Westm' recuperasset

For that the Plaintiff is outlawed upon a *Ca. Sa.*

rasset versus prefat' Quer' per nomen
 (Ec.) tam quoddam debum quinquagint'
 Librar' quam trigint' & quatuor solid'
 qui eidem C. in eadem Cur' dicti Dñi
 Regis, coram Justic ejusdem Dñi Re-
 gis adjudicat' fuer' p dampnis suis que
 habuit occasione detenconis deb' illius
 unde conbia' est, Cumqz pced' C. p ci-
 tiori obtentione debi & dampnoꝝ pcedia'
 postea scilicet vicesima octavo die No-
 vembriis Anno (Ec.) supradicto extra
 dictam Cur' dicti Dñi Regis coram Ju-
 stic ejusd' Dñi Regis pscut' fuit quod-
 dam brebe ejusdem Dñi Regis de Ca
 Sa versus prefat' Quer' p debo & damp-
 nis pced' ad tunc Dic R. direct' per quod
 quidem brebe idem Dominus Rex eidem
 Dic precep' quod caperet pced' (Quer') si
 inveni' fuisset (recite the Writ Usque) de
 debo & dampnis pced' ad quas quidem
 Octab Sed Hillarii coram Justic dicti
 Dñi Regis apud Westm' pced' ven' pre-
 dia' Defend' per Altoꝝn' suum pcedia' &
 op se quarto die versus prefat' Quer'
 de placito & ipse non ven' & G. H. Ar-
 tunc Dic pced' Com' R. tunc mand' quod
 pced' Quer' non fuit inveni' in Ballia
 sua per quod ad tunc & ibidem eidem
 Dic R. precept' fuit qđ exigi faceret pre-
 dia' (Quer') de Com' in Com' quousque
 utlagaretur si non, Ec. Et si, Ec. tunc
 eum caperet & salvo custod' faceret ita
 quod heret corpus ejus coram Justic
 Dñi Regis apud Westm' in Crō Sed
 Trinitatis extunc pr' sequen' ad satisfi-
 faciend' prefat' C. de debo & dampn' pre-
 dia'.

Return' Vic'.

Exigent.

dict', Et unde, &c. Ad quem quidem Crastin' Trin' coram Justic dicti Dom' Regis p'ed' apud Westm' p'ed' G. H. mand' qđ ad Com' ip'ius tunc Dic' cent' apud Castrum R. vicesima septima die Martii Ann' (&c.) supradicto p'ed' (Quer') p'imo exat' fuit & non comperuit [& sic ad quatuor' Com' R. p'ed' p'or', as in the Exigent] p'ed' Quer' quinto exat' fuit & nō Compuit. Iđ idem Quer' per Judic' J. P. & S. C. tunc Coronatores dicti Domini Regis Com' p'ed' utlagat' fuit, Et idem Def. ulterius die quod utlagat' p'edict' versus p'edict' Quer' in forma p'ed' promulgat' in plenis roboze vigoze & effectu suis existit minime revocat' seu adnihilat', Et hoc, (&c.) Unde petit Judicium si p'edict' Def' p'efat' Quer' ulterius respondere debeat, &c. Cum hoc quod idem Def' verificare vult qđ p'ed' Quer' in Narratione p'edict' superius mentionat' & p'ed' (Quer') in forma p'ed' utlagat' est una & eadem p'sona & non alia neq; diversa, &c.

*Retorn' sup
Exigent.*

*See the next
Precedent,*

Averment.

¶ **E**t p'ed' B. (&c.) Et dicit qđ ad Parr' p'ed' R. p'ed' respondere compelli non debet, Quia dicit qđ quisdam C. S. als scilicet decimo quinto die Martii Anno Regni (&c.) p'psecut' fuit & impetravit extra Cur' dicti Dñi Regis de Cancellar' sua Anglie (eadem Cur' apud Westm' in Com. Midx tunc

*Aliter, upon
an Original.*

*Note, That
if one plead
the Purcha-*

sing of a Writ, he ought not to say, That such a Day he purchased a Writ, but that he purchased a Writ bearing Date such a Day, returnable before the Justices, &c.

existen'

existen' quoddam hze Orig' tunc Vic' W.
direct' p q' quidem breve idem Dom' Rex
nunc p'fat' tunc Vic' W. p'cepit qd' idem
Vic' W. p'ciperet p'd' R. per nomen (Ec.)
quod iuste & sine difone redderet p'fat'
C. quadragint' solid' quos ei debuit &
injuste detinuit & nisi fecerit & p'edia'
C. fecerit p'ed' Vic' secur' de clam' suo
p'osequend' tunc cum' per bonos cum'

p'edia' R. quod sit coram
Justic' dicat Dom' Regis
apud Westm' a die Pasch
in quindecim dies ostens
quare non fecerit, Et qd'
idem tunc Vic' heret ibi
hze p'ed' ad quem diem

coram Justic' dicat Dom' Regis de Banco
apud Westm' ven' p'ed' C. per P. C.
Attorn' suum & opulit se quarta die
versus p'fat' R. de p'edicto placito
& ipse tunc non ven' & P. D. Mil'
tunc Vic' W. Retorn' breve p'edia' in
omnibus servit' & excec' videl' qd' p'ed'
C. inven' eidem tunc Vic' pleg' de p'os
breve suum p'ed' videlicet R. O. &
P. W. ac p'edia' R. nichil habuit in
Ball'ia sua p' quod cum' potuit & ipse
non ven' It' p' aliud brevi dicti Dñi
Regis de Banco p'ed' emanen' p'cept'
fuit p'fat' Vic' W. quod caperet p'edia'
R. si, Ec. Et cum salvo, Ec. Ita quod
haberet corpus ejus coram Justic' dicat
Dñi Reges de Banco p'edicto apud
Westm' p'edia' a die Pasch' in unum
mensem ad respondend' p'fat' C. de
placito p'dicto ad quem diem coram
p'fat'

But if one plead the Return
of a Writ, he ought to plead,
That A. B. Vic' did return the
same before G. T. and other his
Companions, Justices, &c. 37 H.
6. 14.

Capias.

prefat' Justic' dicti Dñi Regis de Banco
 pzed' apud Westm' ven' pzedic' C. per
 Attorn' suum pzed' & op' le quarto die
 versus prefat' R. de plito pzedico &
 ipse tunc non ven' & pzedic' tunc Vic'
 Retorn' qđ pzedic' R. non fuit invent'
 in Ball'ia sua It' sicut prius per aliud
 hze, &c. [Et sic recit' le Alias & Plures
 verbatim ut in le Capias] It' per
 aliud hzebe dicti Dñi Regis extra Cur'
 dicti Dñi Regis de Banco pzed' eman'
 pzecept' fuit prefat' tunc Vic' qđ eregi fa-
 ceret prefat' R. de Com' in Com' quous-
 que, &c. utlagaretur si non, &c. &
 si, &c. tunc eum caperet & salvo, &c.
 Ita qđ haberet corpus ejus coram Ju-
 stic' dicti Dom' Regis de Banco apud
 Westm' pzedic' in Octab' Sci Martini
 ad respond' prefat' C. de placito pzedic'
 ad quem diem coram prefat' tunc Justic'
 dicti Dom' Regis de Banco pzed' ven'
 pzed' C. per Attorn' suum pzed' & op'
 se quarto die versus prefat' R. de pre-
 dicto placito & ipse non ven' & pzedic'
 tunc Vic' videlicet R. D. Mil' Retorn'
 hzebe pzedic' in omnibus servit' & ere-
 cut' videlicet quod ad Comit' suum W.
 tent' apud Castrum W. in Com' pre-
 dicta die Martis Tricesimo die Augusti
 Anno (&c.) pzedic' R. primo exat' fuit
 & non comperuit & ad Com' suum W.
 ibidem tent' (tali die, &c.) pzedic' R.
 scdo exat' fuit & non comperuit [Et sic
 recit' le Retorn' erigi fa' verbatim] It'
 per Judicium Coronatoꝝ dicti Dom' Re-
 gis Com' pzedic' tunc utlagat' fuit &
 adhuc

Alias.
 Plures.

Exigent.

Return Sum
 Exigent.

Utlagat'.

Prout per Record'.

adhuc utlagat' existit prout per Record' & Process' inde in Cur' dicti Dom' Regis de Banco apud Westm' pdict' de Record' reman' plenius liquet & apparet, Et hoc parat' est verificare unde per' Iudicium si ipse idem B. ad Parr' pdict' R. sic ut p'fertur utlagat' existend' respondere compelli debeat, &c. Cum hoc, &c. * (Ut sup'ra)

* Averment.

Utl' pleaded in brief upon a Ca' Sa'

ff. **V**EN & Des vim & injur', Et dicit quod p'ed' Quer' in placito suo p'dict' respondere non debet quia dicit qd' quidam S. G. gen' in Cur' de Cod Banco coram Justic' ejusdem Cur' apud Westm' in Com' Middel' impletalet p'fat' H. in quodam placito debet ac postea scilicet Termino (&c.) Anno (&c.) in eadem Cur' recuperabit versus p'fat' H. debitum suum pdict' & dampna sua occasione detentionis debet illius unde idem H. in eadem Cur' condia' fuit p'dictu'que H. pro eo qd' non ven' in eadem Cur' de Cod Banco pdict' p'fat' Samueli de debo & dampn' pdict' satisfactur' sedm' legem & cons' hujus Regni Anglie in exigendi poit' fuit ad utlagand' in London' & ea occasione postea scilicet die Lune prox' ante Festum, (&c.) Anno, (&c.) utlagat' fuit ad Decem pdict' S. de pdict' placito unde condia' fuit prout per Record' inde in Cur' Dni Regis coram Justic' suis apud Westm' residen' plenius liquet & apparet que quidem utlagat' adhuc in suis plen' roboze & effeau remanet

manet minime reuersat' seu adnullat',
Et hoc parat' est verificare unde petit
Iudicium si predicta Quer' in placito
suo predicta' respondere debeat, &c.

Note, If he was outlawed in a County,
then say, Posit' ad utlagand' in Com L.
Et ea occasione postea scilicet (tali die &
anno) in Com L. predicta' utlagat' fuit
ad scā' predicta' M. de placito debi prout
per Record', &c.

ff. **V**im & injur' quando, &c. Et di- *Aliter in*
cit quod ipse ad narracon' p'dicta' *brief upon*
M. dicta' respondere compelli non debet *Original.*
quia dicit quod quidam T. B. als scilicet
Termino Pasche Anno (&c.) impli-
tauit predicta' M. in Cur' de Cor Banco
de p'lito debi, Et predicta' M. pro eo qd
non veni in predicta' Cur' de Cor Banco
p'fat' T. inde responsur' scdm legem
& cons' hujus Regni Anglie in exigendi
p'oit' fuit ad utlagand' in London &
ea occasione postea scilicet die (&c.) p'or'
post festum (&c.) Anno Regni (&c.) in
London predicta' utlagat' fuit put p
Record' & Process in Cur' dicti Dni
Regis nunc de Banco predicta' residem
liquet manifeste que quidem utlagat'
vsus p'fat' M. in forma predicta' hit' &
promulgata adhuc in suis plen ro-
bore & effectu remanet per ipsum M.
minime reuersat' seu adnihilat', Et hoc
parat' est verificare unde per Iudicium
si ipse idem R. ad narracon' predicta'
M. sic ut p'fertur utlagat' existem
C re=

respondere compelli debeat, &c. Vide *Atl. pñtat post Judic in deho*, Thompsl. 8, 9. 1 Bro. 7. 2 Mod. Intr. 4, 5. Rob. Ent. 214. *Quer Atl' ante bill exhibit'*, Cliff. 14. *Sile post ult' Continuance*, Idem, 3.

Note, By 21 Ed. 4. 54. he that pleaded an Outlawry in the same Court, may begin at the Exigent, if he will; because good until it be reversed: And that in Debt upon a Recovery, he may begin at the Judgment, or at the Original at his Pleasure.

See for Precedents on this Head, *Rast. Ent.* 252, 605. *Ast.* 11. 1 *Brownl. part.* 1. fol. 5. numb. 24, 25. *Thompson*, fol. 9. numb. 30, 31, 32, 33.

How to commence and conclude upon Matter apparent in the Writ.

For Matter out of the Writ.

Note, It is said, That when the Defendant pleads in Abatement for Matter apparent in the Writ, he shall commence his Plea so, *Petit Judic de brevi, &c.* and shall conclude in the same Manner. *Mo.* 30.

But if for Matter out of the Writ, as Excommunication, &c. he shall make the Conclusion so, and not the Beginning, — *Unde pet Judic, et quod ob Causam pñdia' Bill' pñdia' cassetur, &c.* Ibidem.

The Defendant to be dismissed without Day.

The Writ shall not abate for Excommunication in the Plaintiff or Demandant, but the Defendant shall be dismissed without Day; and after Letters of Absolution shewed to the Court, the Plaintiff shall have a Re-summons, &c. upon his first Original. *Lit. Sect.* 201.

Every

Every Excommunication shall not disable; as if a Mayor, Bailiff, and Commonalty, or any other Body aggregate of many, bring their Action, Excommunication in the Mayor or Bailiff shall not disable them, for that they sue and answer by Attorney; but it is otherwise of a sole Corporation: So if Executors or Administrators be excommunicated, they may be disabled. *Co. Litt. 124.*

Every Excommunication shall not disable.

If a Bishop be Defendant, an Excommunication by the same Bishop shall not disable the Plaintiff, and it shall be intended for the same Cause, if another Matter be not shewn. *Co. Com. Sur. Litt. 124. a.*

Bishop Defendant pleads Excommunication.

If an Executor brings an Action, Outlawry in the Plaintiff is no Plea, because he sues in the Right of another; but it is otherwise of Excommunication. 21 *Ed. 4. 49. 34 Hen. 6. 14. 14 H. 6. 14.*

Excommunication pleaded against an Executor.

In Real or Personal Actions, where the Damages are uncertain, (as in Trespass, of Battery, of Goods, of Breaking his Close, &c.) and are not forfeited by the Outlawry, there the Outlawry must be pleaded in Disability of the Person——But if the Ground or Cause of Action be forfeited by the Outlawry, as in Action of *Debt, Detinue, &c.* the Outlawry may be pleaded in Bar to the Action. *Co. Litt. 128. a. b. 9 Dyer. Eliz. 262. 7 H. 4. 4. b. 5 Co. 109. Vide 2 Lut. 1513.*

Outlawry when to be pleaded in Disability, when in Bar.

When in Covenant upon Breach for 100 l. Rent, Outlawry in Bar was held a good Plea; but there being another Breach for not repairing, and nothing pleaded over to that, it was then allowed a good Bar.

When the Record of Outlawry is to be shewed presently.

When Day shall be given to bring it in.

When any Man pleads an Outlawry in Disability of the Person, he ought to shew forth the Record *Sub pede sigilli*, (because the Plea is dilatory) unless the Record be in the same Court.

But if he plead an Outlawry in Bar, he shall have a Day to bring in the Record. *Co. Litt. ib. 6 Eliz. Dyer 228. F. N. B. 241. Staundf. Pl. Cor. 105. Vide 2 Lut. 1514.* Where it is said, there is no need to produce the Record of the Outlawry *Sub pede sigilli*, when the Plea is in Bar of the Action, and the Record of the Outlawry in the same Court; and that so it was resolved in *Draycote and Curson's Case*, 1 *Lut.* 39, 40. But if the Plaintiff replies, and pleads *Nul tiel Record*, the sure formal Conclusion of such Plea is, *Et hoc parat est verificare qualitercunque, &c. put Cur confid, Et quia Justic hic se advisare volunt super inspectione Recordi p pda Defend supius allegat dies dat' est partibus pda' hic usque, &c.* as it is in *Dyer 227, 228.* In which Case, upon the Plea of *Nul tiel Record' d'un Utlaw*, the Entry was, *Et dict' est p'fat' Defend qd' heat Record' hic tali die, &c. suo p'cto.* And there it is said, that the Record being in the same Court, such Entry was not formal: But the Reporter observes, that there are some Precedents in the like Cases, in which the Plaintiff replies that there is such a Record, *Et hoc parat est verificare p Record' illi*, and then the Entry is, *Et p'f qd' Record' illi videat & inspiciatur, &c.* as in *Rob. Ent. 104. Hern. 278. Bro. Judic' Writs tit' Scir' fac'*

far, the last Precedents under that Title, & *L. Brownl.* 433. But in none of the said Precedents is any Mention that the Party, which pleads the Record, *Habeat Record ill* at such a Day *suo periculo*.

Vide 1 *Lut.* 39. In Dower the Tenant pleads, That the Demandant is waived. *Replication*, That he was Commorant at another Place, &c. Demurrer thereupon, and Judgment for the Tenant.

Note, That in a Count upon a Writ of Waste the Plaintiff entitled himself to the Reversion by Discent. Defendant pleads in Abatement, that his Title was by Devise, &c. and then traverses the Descent; and it was held a good Plea upon a general Demurrer. *Vide* 2 *Lut.* 1557.

See 2 *Lut.* 1601, &c. where Outlawry in the Testator was pleaded in Abatement to an *Indebitatus Assumpsit* for Monies receiv'd to the Testator's Use.

If one be outlawed at the Suit of one Man, all Men shall take Advantage of it; so in case of an Alien born, or Excommunication. *Co. Litt.* 128. Where all Men may take Advantage.

See more of Outlawry after in General Bar, by Disability of the Plaintiff pleaded.

Where Attainder upon the Statute of Pre-munire and Recusancy shall be Disability to the Person of the Plaintiff. See the Statutes, and *Co. Litt.* 128 & 130. Attainder upon Pre-munire.

Note, it is said, That if one make a full Defence against a Person attainted, by the better Opinion he may afterwards plead, that he was attainted the Day of the Writ purchased, but not after Imparlane. 32 *H. 6.* 23. Full Defence upon an Attainder.

Debt upon Specialty, the Defendant may plead Outlawry in the Plaintiff, though he hath imparled; for that is a Bar, and entitles the King. 16 Ed. 4. 4.

3dly, By Abatement relating to the Person of the Defendant.

For that the Defendant is one of the Clerks of the Chancery.

ff. **E** & p̄dica' C. D. in propria persona sua veni & dicit qđ Cur Dñi Regis hic cognitionē istius placiti here non debet quia dic qđ Consuetudo Cur' dicti Dom' Regis de Cancellaria sua Regni sui Angl' est & a tempore cuius contraria memoria hominum non existit usitat' & approbat' fuit quod Magistri & Clerici Cur' Canc' dicti Domini Regis nunc & progenitorū suorum quondam Regum & Reginarum Anglie & eorū serbient vel Ministri non Attachientur distringentur capentur nec quovismodo ad respondendū alicui persone de ullo placito compellerentur coram ipso Rege seu coram aliquibus Justiciis secular' dicti Dñi Regis seu progenitorum suorum quibuscunq; preterquam coram Dño Rege in Cancellaria sua super aliquibus placitis transgr' queret seu demand' (plitis personam dicti Dñi Regis tangen' plitis de libo testio felonis & placitis de Appell' duntaxat' except') que quidam Cur' Cancellar' dicti Dom' Regis potestatem het & a tot' tempore suprad' huit potestati omnimoda plita aliquos magistros seu Clericos dñe Cur' Canc' tangen' & eorum serbient' & ministros (except' pre-
except')

except') coram eodē Dñō Rege in Cancellaria sua quousq; p̄lita p̄dē determinarentur, tenere & terminare & idem C. dicit qđ ipse idem C. est & a tempore exhibitiōis Wille ipsius H. p̄dē fuit unus Cl'icorū C. S. Mil' unius ser Cl'icorū Cur Cane Dñi Regis nunc cujus continua residentia ibidem requiritur & qđ ipse hic intra' existit in placitum ad respondendū p̄dīa' H. contra voluntatem suam & contra tenorem libertat' privilegii & consuetud' p̄dīa' unde non intendit p̄dē Cur dici Dom' Regis coram ipso Rege p̄litum p̄dictum versus eundē C. D. ulterius cognoscere vellet, &c. Vide Thomps. Ent. 3. Bro, Vade Mec. 497, 500.

That the Defendant is a Master in Chancery. Repl p̄ Orig' p̄secut' & utl. Bro. Met. Nov. 219.

That the Defendant is a Member of Parliament and Procurator for the Diocess of Oxon. Bro. Met. Novissim 186. Tit. By a Member of Parliament. Idem 217, 250.

Note, That after an Imparlanee, notwithstanding a Salvo of all Exceptions and Allegations, tam ad breve qđ ad Parr'; yet the Party may not take Advantage of the Privilege of Chancery, for after Imparlanee the Court shall not be ousted of the Jurisdiction. 22 H. 6 7. a Vide 20 H. 6. Site p̄ Servien Un' ser' Cl'icorū in Cane, Rob. Ent. 210. Vide 1 Lut. 44.

Privilege of the Exchequer pleaded after Imparlanee, Salvis Except tam ad breve qđ ad Parr', adjudged naught upon Demur-

rer, sed aliter si Salvis omnibus Exceptionibus quibuscunque. Vide 2 Mod. Intr. 8. Thomps. 4.

For that he is one of the Philazers of the Common Pleas.

¶ **E**t predicta Def. per W. T. Attoꝝ suū veni & dicit quod ipse est & die exhibet Bille predicta Quer scilicet (Ec.) & diu antea fuit unus Philazariorū. Cur' Dom' Regis de Comuni Banco apud Westm' in Com' Middor quōque omnes huiusmodi Philazariorū de eodem Banco nec aliqui eorū ad respondendū coram aliquibus Iudic' seu Ministris Dñi Regis aut aliis Iudic' secularibus quibuscunque preterquam coram Iudic' Dñi Regis de Banco predicta super aliquibus placitis seu querelis (plitis de libo tenēto felonū & appell' duntaxat excepti) contra voluntatem suam trahi seu compelli non debeat nec a tempore cujus contrarii memoria hominū non existit consuever' juxta libertatē & privileg' die Cur' de Banco a toto eorundem tempore usitat' & approbat' Et hoc (Ec.) unde petit Iudiciū si Cur' dicti Dñi Regis hic p̄itum predictum ulterius cognoscere velit, Ec.

For that he is one of the Attornies of the Common Pleas,

¶ **E**t predicta Defend in propria Persona sua veni & dicit qd ipse est & die exhibet Bille predicta Quer predicta & diu antea fuit unus Attoꝝ Cur' Dñi Regis de Comuni Banco & in Officio suo predicto apud Westm' in Comitatu Middor intendē diversa negotia quam plurimorū ligeorū dicti Dñi Regis in Banco

Banco illo prosequendū & defendendū ut
eorū Actorū sequitur qđ idem Defend
& omnes alii Actorū de Banco illo dum
sic aliqua negotia prosequenter vel de-
fendū ad respondendū coram aliquibus
Iusticiis seu Ministris Dñi Regis aut
aliis Iudicibus secular' quibuscunque
preterquam coram Iusticiis ipsius Domini
Regis de Banco super aliquibus pñtis
Querel' seu demand' que personam Dñi
Regis non tangunt (plito de libo cēto
feloniis & Appell duntaxat except) iur-
ta Consuetud' in eadem Cur' de Banco
hactenus usitat' & approbat' contra vo-
luntatem suam trahi vel compelli non
debeat nec debeant nec aliquibus rem-
poribus retroact' trahi vel compelli con-
sueverunt Et hoc, (Ec.) unde non in-
tend' quod Cur' Dñi Regis hic pñtum
predia' versus eum cognoscere velit aut
debeat, &c.

Et pñtia Quer' dic qđ per aliqua p
prediaum Defend' superius pñtando
allegat' Cur' dicit Dñi Regis nunc hic
pñtum prediaum versus ipsum Defend'
ulterius cognoscat quia dic' quod post
exhibicionē pñtia' Wille ipsius Quer' in
Cur' die Dñi Regis coram ipso Rege hic
versus pñtia' Defend' scilicet die, (Ec.)
in Termino, (Ec.) ultimo preterito, p-
dia' Defend' p Cons' tunc Iusticiis de
Banco apud Westm' predia' ab exer-
cend' Oñe' un' Actorū in eadem Cur' de
Banco apud Westm' predia' prejudicat' &
amor fuit & adhuc existit per quod pri-
vileg'

Repl.
That he was
forejudged
the Court,
and amoved
from his
Office.

Prout per Record.

bileg' p'dict' Def' ut un' Attozn' in eadem Cur' extunc cessabit & adhuc cessat prout per Record' inde in eadem Cur' de Banco coram Justic' de Banco ille apud Westm' p'dict' remanend' lequet manifeste & hoc, (&c.) unde per Judicium & quod Cur' die Dom' Regis nunc hic p'stitum p'dict' versus p'dict' Defend' cognoscat Et quod p'dict' Defend' ad Billam ipsius Quer' p'dict' ulterius respondeat, &c.

*Rejoinder.
No such Record of fore-judgment.*

Et p'dict' Def' die quod Cur' die Dñi Regis hic placitum p'dictum versus ipsum Def' ulterius cognoscere non debet quia die quod non hetur aliquod t'le Record' de prejudicand' & amovend' ipsum Defend' ab exercend' Officium unius Attozn' in Cur' dia' Dñi Regis de Banco p'dicto de Termino, (&c.) jam ultimo p'rie remanend' apud Westm' qual' idem Quer' superius replicando allegavit Et hoc (&c.) unde (&c.)

Surrejoinder Quod habetur tale Record' de, &c.

Et p'dict' Quer' dicit quod hetur t'le Record' de, (&c.) [ut supra] usque allegavit Et hoc porat' est verificare p' Record' illud Et dem' est p'fat' quer' p' Cur' dicti Dom' Regis nunc hic quod heat Record' illud coram Dño Rege apud Westm' die, (&c.) p'ior' post, (&c.) p'fecto suo. Idem dies dat' est partibus p'dict' ibidem, &c.

The like Pleadings may be for a Clerk or Attorney of King's Bench, *mutatis mutandis.*

Vide

Vide 1 *Lut.* 639. Upon Privilege of an Attorney *de B. R.* Judgment quod respondere possit.

Vide Thomp. 4. Bro. Vad. 469. *Vide* 2. Mod. Intr. 7.

Quod Def. est *Un* Baron quinq; Portuū, &c. Clerk's Ass. 11. Rob. Ent. 199.

Quod Def. est Deputat' Servien ad arma. Thomps. 4.

Qd Def. est *Un* Servien ad Reg & implet debet p Orig Clerk's Ass. 5. Demurr' inde.

Quod defend est *Un* Receptor & Tally-Cutter Scaccar". Thomps. 3.

Quod defend est *Un* Clie' Scacc'. Thomps. 118.

Quod defend est Stannar', &c. Bro. Red. 178.

Quod defend est *Un* Pecuniar' de Monetar'. Thomps. 3.

Quod defend est Cancellar' Bedalloz & *Un* Universitat Oxon, &c. Thomps. 5. 9.

See 2 *Lut.* 1665 &c. Debt upon a Bond, Defendant pleads Privilege as an Attorney *de C.* Repl that for Five Years before the Original, the Defendant had not prosecuted or defended any Suit, &c. Demurrer thereupon, and Judgment for the Plaintiff.

Plaintiff says, The Defendant ought not to plead in Abatement after an Imparlance.

E C pda' N. die qd p C. ad plicand p plicum in cassation queret pda' per ipsum in forma p plicat (videt qd ipse p p C. tempore levacion queret

In an Inferior Court.

queret p̄s vel unquam postea non fuit possessorat de messuagio p̄s cum pertin̄ in narr p̄s supius mentionat' in visum posu' p hanc Cur recipi vel admitti non debet quia die qđ ipse p̄fat A. ad Cur hic tent' 10 die instantis mensis Junii narravit vers' p̄s C. in p̄lito p̄dia' Ad quem diem p̄p̄s C. ad morand' respons' suam in eod' p̄lito per licenc' inde interloquend' & p̄litand' ad Narr p̄s usq; p̄r' Cur hic tenend' hoc die scilicet 24 die Junii Et post moratōem & interlocutōem p̄dia' C. ad Narr p̄dia' in forma p̄dia' p̄litavit (p̄out p̄ Record' inde in Cur' hic reman' plenius liquet) Et hoc p̄dia' A. parat' est verificare p̄ Record' p̄dia' Unde per Iudicium Cur si p̄dia' C. post moratōem p̄litatōis & interlocutōis p̄dia' recipiet' seu admittet' p̄litare vel dicere ut p̄dictum est Et quod p̄dia' C. distringat' reparare Messuagium p̄dia' cum pertin̄ posu' in visum p̄dia' C. Et qđ Damna & Custag' adjudicent' p̄fat' A. p non reparatōe ejusdem Messuagii, &c.

Demurrer to a Plea in Abatement by Privilege pleaded after an Imparlance.

¶ **E**t p̄dia' A. dic qđ materia in p̄lito p̄s p̄diai B. supius spec' minus sufficiend' in lege existit ad p̄d. B. p̄litum suum p̄s vers' ipsum A. tend' manutend' qđq; ipse ad p̄litum p̄dia' modo & forma p̄dia' fac' necesse non het nec per legem terre tenet' respondere, Et pro Causis moratōis in lege idem A. Cur hic monstrat qđ p̄dia' B. alias scilicet Termino Sancti Michis ult' p̄terit' p̄ C. D.

C. D. *Actoꝝ* suum *Ven* hic in *Cur'* ad respondendū *p̄dix'* *A.* *p̄dix'* de *p̄lito*, Et tunc defendebat vim & injuriam quando, &c. Et per licentiam inde interloquendi hic usq; hunc diem scit in *Caas* Sed *Hillarii* ad respondendū eidem *A.* de *p̄lito p̄dix'*, Et huit, &c. put patet *p̄dix'* *Termino* Sed *Nichis* ult' preterit rotulo si per quod *p̄dix'* *B.* submitit se *Jurisdictioni* hujus *Cur'* & tot' *advantagiū* & *privilegiū p̄dix'* p' *p̄d'* *B.* *supius* petit perdidit' & amisit, *Ac* p' eo quod *p̄dix'* *p̄lit'* *privilegii p̄dix'* *B.* *supius* *p̄litat'* post *p̄dix'* *licentiam* interloquendi p' *p̄dix'* *B.* in forma *p̄dix'* petit' & hit' p' *legem terre Anglie* *p̄litari* non debet, *Ac* etiam p' eo quod *p̄litum p̄dix'* est incertum & caret forma unde p' defectu sufficient' *Materie* in *p̄lito p̄dix'* *supus* spec' idem *A.* petit *Judicium* & *dampna* sua occasione *detencōn* debi illi sibi *adjudicari*, &c.

In Abatement, the Judgment upon a Demurrer against the Defendant is a *respondeat Ouster*; but upon a *Plur tiel Record*, which is near related to a Plea in Abatement upon a *Defecit de Record*, the Judgment is final; for *Trial per Record* is quasi *Trial per Pais*.

See afterwards among the Judgments in Abatement.

Note, That in *Turbill's Case*, *Pasc. 19. Car. 2di Regis*, Mr. *Turbill*, an Attorney of the *King's Bench*, having covenanted to pay one *Nevison* 200 l.

200 *l.* upon a Conveyance of Lands to be made to him by *Nevison*, free from Incumbrances; which Conveyance *Nevison* afterwards made (tho' the Estate was not free from Incumbrances). Hereupon the Creditors of *Nevison* levied Plaints in the Sheriff's Court of *London*, and attached the Money in *Turbill's* Hands, who thereupon brought his Writ of Privilege to supersede the Foreign Attachment, but the Judge would not allow it, till the Matter was moved in the *King's Bench*, where it was ruled, that they should proceed in *London*, notwithstanding several Cases cited, that customary Actions in *London* have been discharged by Privilege of the *Common Pleas*, as 38 *H. 6.* 29. *b.* 9 *Ed. 4.* 35. *b.* & 1 *Leon.* 189. & 2 *Leo.* 156. *Lodge's Case*, being the same with the Case in Question. For the Court conceived (as the Creditor's Counsel alledged) that it was a hard Case, on their Part, if the Privilege should be allowed, for then the Creditors would lose their Debts, and that *Turbill* would only pay that which he had covenanted to pay, and would be discharged against the said *Nevison*, &c. *Vide* 1 *Saund* 67 68, 69.

See *Stiles*, in his *Pract. Regist. Tit. Privilege*, says that the Prayer of Privilege is not properly a Plea.

Also, that a Privileged Person shall not be allowed his Privilege upon a Motion to the Court, but he must appear and plead his Privilege, and upon his Pleading he shall be allowed.

See for more Precedents on this Head relating to the Person of the Defendant *Rast.* 106, 173, 472, 473. *Brownl.* 161, 167, 268, 171.

Hern

Hern 3. Thomps. fol. 3. Numb. 18, 21, 22, 23.
1st of Brown fol. 2. Numb. 8.

4ly, Abatement for Variance.

¶ **Q**uibus lectis & auditis idem Def. *Variance between Writ and Specialty.*
dicit quod h̄c p̄dicta' varians est a scripto p̄dicta' eo quod idem Def. in eodem scripto nominatur Thomas D. sen de Novi Castri que dictiones (sen de nobi Casti) omissa sunt in h̄c p̄dicta' sic que h̄be illud non Warrantizatur per scripe p̄dicta' per quod idem def per iudiciū de h̄be illo, &c.

See Cl' Mist' 2, 3. Reg' p̄litand' 278, 281. And see for Directions to several Precedents at the End of this Division.

¶ **E**t p̄dicta' Def. p̄ J. R. Attorū suū *Aliter for Variance between the Original and Specialty.*
ven & per Iudiciū de Br̄ p̄dicta' qui dic quod habetur variantia inter scriptum p̄dicta' hic in Cur plat & h̄be original sup eodm scripto impetrat quia dic quod ipse idm def. p̄ scriptum illud nominat & vocatur P. D. de S. Et hoc parat est verificare unde ex quo habetur variantia inter h̄c p̄dicta' & scriptum p̄dicta' sup quo h̄be p̄dicta' impetrat fuit per iudic de h̄c illo, &c.

Note, It's said that Variance between the Bond and the Writ may be pleaded after Imparlance in another Term. *Vide postea & le Reason.*

¶ Qui-

For Vari-
ance be-
tween the
Original
Writ and
Declaration.

¶ **Q**uibus lectis & auditis idem def.
pet' Judicium de brevi ill' quia
dic' quod habetur variatio inter breve p-
dict' & nary' super idē breve declarat in
hoc, (viz.) p'dict' quer' in brevi p'dict'
nominatur p nomen J. W. Et in Parr'
p'dict' super brevi illo fundat eadem
quer' nominatur per nomen T. W. Un-
de ex quo habetur variatio int' breve &
nary' p'dict' in nomine ipsius quer' idem
defend' de brevi ill' pet' Judicium, &c.
See 2 Mod. Intr. 9. Reg' Plitand 277.

If the Addition of a Yeoman be in the
Writ, and not in the Count, the Writ shall
abate. 3 H. 6. 23.

It is said, if the Plaintiff is not named Exe-
cutor in the Latitat or Alias, &c. and yet
declares as Executor, no Variance will lie;
aliter if per Original, quere.

For Variance
between the
Writ and
Bill.

¶ **Q**uibus lectis & auditis idem R.
petit Judicium de brevi p'dictio
quia dicit qd habetur variatio int' breve
p'dictum & p'dictam Billam super quam
breve p'dictum impetratum fuit p eo qd
in p'dictio brevi super billam illam im-
petrat' p'd' Johes vocatur per nomen
Johis Roakes ubi ipse in p'd' billa &
sus p'fat' R'icum hic in Cur' p'olata vo-
catur per nomen Johis Stroakes, Et
hoc, &c. Unde ex quo habetur variatio
inter breve p'd' & p'dictam billam super
quam bre p'd' fuit impetratum idem R.
ius pet' Judicium de brevi illo, &c.
Vide

Vide 1 Bro. 3. 2 Mod Intr. 10. Simil' in
Querelam & Parr'. Clif. 20. Bro. Red. 1, 2.
Reg' Plit' 282.

In Debt by Executor.

H. **D** Eſ dicit qd' p̄ Testator in h̄ebi
p̄ nominatur J. Horne nuper
de Kingſtown, & in Teſtamento p̄dicto
nominat' J. Hornesby de Paroch' de
Kingſington ſicque h̄ebe' p̄dicta' varians
eſt a Teſtamento p̄dicta' & inde minime
Warrantizatur p̄ quod pet' Judicium
de h̄ebi, &c.

Variance be-
tween the
Writ and
Teſtament.

See Clerk's Aſſiſt. 14. 2 Mod. Intr. 11.
Reg' Plit' 280.

Executor in a Count in **Quare Impedit**
for Diſturbance in the Life of the Teſtator,
concludes in **Punc retardacō' Execucō' Teſti**;
and upon a Plea in Abatement for
that Cauſe, the Writ was abated upon De-
murrer. 1 Lut. 3. See after.

Note, That after Imparlanſe, Variance be-
tween the Teſtament or Letters of Admini-
ſtration ſhall not be pleaded, becauſe the Te-
ſtament is only one Time ſhewn to the Court;
but it is otherwiſe of a Bond, for that always
remains in Court, and therefore Variance be-
tween the Bond and Writ, may be pleaded
after Imparlanſe in another Term. 36 H. 6.
32, 33. 38 H. 6. 2. 19 H. 6. 7.

But it is ſaid, that after Imparlanſe one
may not demand Oyer of a Teſtament, nor of
D other

other Deeds and Obligations. 22 H. 6: 38.
 & 37 H. 6. 16. 38 H. 6. 1, 8.

Yet this seems to be mistaken, for the Practice is otherwise.

And the 4 H. 7. fol. 12. says, that if a Man in Debt upon an Obligation imparles before he demands Hearing of the Obligation and Condition, and hath not entred, he cannot plead the Condition afterwards, for he shall not have hearing of that, if he do not alledge Variance.

And it is the Practice of the *Common Pleas*, when they deliver Declarations upon Bonds, after *Et inde pducit Segam*, &c. to write thus, *Et pducit B. p C. D. Attorn' suum ven' & defend vim & injur' quando*, &c. *Et per auditum scripti obligatorii pducit Et ei legite*, &c. *Per etiam auditum condition' ejusdem scripti, Et ei legite in hec verba*, ff. The Condition of this Obligation is such, &c. and to set forth the Condition, *Quibus lectis & auditis idem B. per lecentiam inde interloquendi hic usq; Crō Scd Trin, Et habet*, &c. *idem dies dat' est pstat' N. hic*, &c.

Oyer.

And in *Stiles Pract. Reg.* which relates to the *King's Bench*, *Tit. Oyer*, it is said, That if one be sued upon an Obligation, he may pray *Oyer* of the Obligation; and before he hath *Oyer* of it, he is not bound to plead to the Plaintiff's Declaration; yet he may plead without *Oyer* if he please, but then he cannot afterwards waive his Plea, and demand *Oyer*: And he says also, to have *Oyer*, is not only to have a Sight and Hearing, but to have a Copy also,

also that the Defendant may know what to plead.

And *Lane* says in his Reports, That in the *Common Pleas*, if one plead a Writing, and the Party do not demand *Oyer* the same Term, he may not have it in another Term, but in the *King's Bench* he may. *Lane* 39.

ET p̄s quer' die quod p̄s def. variance int' breve p̄s & testament' p̄d' hic in Cur' plac' p̄stare admitti non debet quia die quod idem quer' alias scit' Termin' Pasche anno Regni Domini Regis nunc 7 versus p̄dicta' def. super brevi p̄ed' in forma p̄dicta' in Cur' hic narrabit ad quam quidem narrationem suam ut p̄fert' fact' p̄ed' def' in eadem Cur' hic petit licentiam inde interloquendi hic usq; ad hunc diem scit' in Crā Scē Trin' ad respondi eidem quer' de p̄sito p̄dicta', Et habuit, &c. put patet p̄dicta' Termino Pasche Anno 7 supra dicto rō 26. Et hoc parat' est verificare unde petit Judic' si p̄d' def. ad placitum variance inter bre & testamentum p̄dicta' admitti debeat, &c.

Repl.
To Variance
pleaded in
Abatement
after Impar-
lance, inter
Breve & Te-
stament.

Note, That it's said, that in Debt by an Executor after Imparlance the Defendant shall not have *Oyer* of the Testament the second Term; but 'tis otherwise of Letters of Administration. 16 Ed. 4, 8.

Oyer of the
Letters Te-
stamentary
and Admini-
stration.

Also if one plead a Demise to a Stranger, the other Party, against whom the Demise is pleaded, may not have *Oyer* of the Testament,

because it does not pertain to him that pleads it, but to a Stranger. *Vide* 3 H. 6. 46.

As to *Oyer* of Deeds, it is further said, that if a Deed be of Record in Court, one shall not have *Oyer* of that Deed in the same Court. 9 H. 7. 177. *Ed* 4. 18.

But by the 5 H 7. 24. it is said, that a Party to the Record shall have *Oyer* of it in the same Court, because he cannot traverse it; otherwise it is, if it be in another Court. See 5 Co. 74. e.

By 22 H. 6. 38. He that is Party to a Record shall not have *Oyer* of it when the Record is pleaded by Way of Bar, but 'tis otherwise where the Record is to be executed against him.

Mod. Reports, fol. 69. Upon a Motion for Time to plead in a great Cause about Brandy; *Twisden* said, if it be in Bar, you cannot demand *Oyer* of the Letters Patents the next Term; but if it be in a *Replication* you may, because you mention the precedent Term in the Bar, but not in the *Replication*.

It's said, that in Debt upon Arrearages of an Annuity, after Impar lance the Defendant cannot have Hearing of the Deed; but otherwise if the Defendant plead that it was made in another County than where the Writ was brought. 39 H. 6. 17.

20 *Ed*. 4. 9. Says that in Debt upon a Lease of a *Corodie*, the Defendant may have Hearing of the Deed after Impar lance.

In Debt upon an Administrator.

R. **D** Et per judicium de hzevi Quia die qđ in Literis Official' pred' continetur quod Administratio omnium bonoz & catalloz M. B. alias D. prefat' quer' commiss' fuit, Et in hzevi pred' sit omisso pđ' verb' (als D.) per quod p hze predia' non exprimi tur quin predia' M. B. in hzevi pđ' nominat', Et pđ' M. B. als D. in pred' Literis nominat' diverse possunt esse persone, Unde per Judicium de hzevi pred', &c.——Judic' qđ' hzebe cassetur.

ForVariance between the Letters of Administration and Writ.

Upon an Original.

Vide 2 Mod. Intr. 44.

See after for Judgment.

R. **E** T pred' def' p J. R. Attozn' suum ben' & per' auditum Brevis Originalis, Et ei legitur in hec verba [cite the Original] Quo lecto & audito per' Judicium de Brevis illo quia die Quod Breve illud non concordat cum forma Brevis in Registro in hujusmodi Casu edit & pvis' Quia die quod idem Breve caret hoc verba (injuste) Et hoc, &c.

ForVariance between the Writ and the Register.

R. **E** T pđia' def' p D. C. Attozn' suum ben' & per' auditum Brevis Original' pred' quer', Et ei legitur in hec verba (Rer, &c.) Quo lecto & audito idem def. per' Judicium de hzevi predia' Quia die quod hzebe illud malum & viciosum existit & non impetrat' versus

Aliter.

D 3

eunt'

cund' def. sedm̄ cursum & formam Regi-
stri & Breuium Originalium in hac parte
provis Quia dicit qd' idem hze impetrat'
est p̄ hec verba sequen, viz. p̄ec̄ T. S.
quod iuste & sine dilatione reddat J. S.
unum Messuag' & dimidium virgat' terre
cum pertin' in R. Ubi sedm̄ cursum &
formam Registri p̄dicta' terra petetur per
certitudinem acraz terre & non p̄ incer-
titudinem virgat' terre p̄out hzeve illud
impetratur. Et hoc parat est verificare
Unde ex quo hzeve illud in forma p̄ed'
impetrat' vitiosum existit Idem def. pet'
Iudicium de hzevi ille, &c.

For Variance, Jue hze de Exig' fac̄ &
Nar̄ in nomine Def. 1 Brown 4. 2 Mod.
Int. 10. Reg' p̄lit' tit. 276.

See for Precedents on this Division, *Hern* 3.
Aston 3, 4, 5. *Rast* 459. 1st of *Brown*. fol. 3.
numb. 14. fol. 4. numb. 22. fol. 7. numb. 30.
Bro. Rediviv' fol. 2. numb. 6. &c.

5thly, By Abatement for Default in the Writ
and the Action being ill founded &c.

After Oyer:
For that the
Writ and
Nar' are not
warranted
by the Wri-
ting or Spe-
cialty.

Quibus lectis & audit' idem Def.
pet' Iudicium de hzevi & narra-
tione p̄dicta' quia dicit quod p̄d' quer' p̄
hzeve & nar̄ sua p̄d' superius suppon'
qd' idem def. debet p̄esat' quer' quingen-
tas libras quas idem def. redderet Ubi
revera non habetur aliquod tale verbum
in scripto p̄dicta' continens & Warranti-
zans hoc verbum in hzevi & nar̄ p̄ed'
verificat' videlicet quingentas Sed in eo-
dem

dem scripto obligatoria hec duo verba videlicet quinq; genta sunt scripte & contente Que quidem duo verbo quinque genta nullam habent in se significationem de aliqua summa certa licet breve & narratio predicta non Warrantizantur de & sup scripto predicto p pstat quer hic in Cur plat' p quod idem def' pet' Iudicium de brevi & narracione predicta, &c.

And so of the Words Ofo-genta for Otingentas.

Vid. 2 Mod. Intr. 10, 17. Reg' Plit' 279. Bro. Red. 191.

Judgment for the Defendant with Costs.
Vide postea for Judgments.

Et predicta def. p J. L. Attozn' suum ven' & defend' vim & injur' quando, &c. Et petit Iudicium de Billa predicta quia dicit quod p d. H. p ult' voluntatem suam ordinabit & constituit quendam G. W. Executorem testamenti sui predicta simulcum pstat def. & obiit qui quidem G. W. apud D. in Com' predicta administrabit bona & catalla que fuer' predicta H. H. cum pstat def. Unde ex quo pstat G. W. in Billa predicta non nominatur Idem def. petit Iudicium de Billa predicta Et quod Billa illa cassetur, &c.

For that another Executor who administered is not named.

Cassari non debet quia dicit quod predicta G. W. post mortem predicta testatoris aliqua bona seu catalla que fuer' ejusdem testatoris tempore mortis sue ut Executor ipsius Testatoris nunquam administrabit Et hoc petit quod inquiratur

Repl' That the other never administered.

Issue.

ratur per Patriam, &c. Et predicta def.
fuit, &c

Vide Thomp. 1. & Hans 102. Rob. 229.

See 1 Lut. 696, &c. Plea in Abatement,
that the other Two named in the Bond as
well as the Defendant, bound themselves
jointly.

Aliter, For that there is another Executor
not named.

ff. **Q**uando, &c. Et dic' qd. p^r M. B. in
vita sua apud L. in Com' S. con-
didit testamentum & ultimam volunta-
tem sua in scriptis & constituit & ordi-
navit in eisdem ipsum C. & quendam
E. F. Executores ejusdem Testamenti
Et postea idem M. B. testator ibid' obiit
post cujus mortem idem C. ut Execut'
testament' ipsius M. ibidem administra-
vit diversa bona & Catalla que fuer'
ejusdem M. tempore mortis sue qui qui-
dam C. adhuc superstes & in plena vita
existit videt' apud L. p^rdicta Et hoc (&c.)
Unde ex quo p^rdicta C. non nominatur in
breve p^rdicta idem C. petit iudicium de
breve illo, &c.

*Repl. Quod te-
stator non con-
stituit al' Exe-
cutor.*

Et p^rdicta J. dic' quod breve suum p^r-
ratione allegat' cassari non debet
quia dic' quod p^rdicta testator non consti-
tuit p^rdicta C. executore testamenti p^rdicta
p^rout p^rdicta C. superius allegavit Et hoc
per' quod inquiratur & p^riam Et p^rdicta
C. fuit, &c. Ideo &c.

Vide 1 Bro. 4. Plur' Gen' 11, 12. 2 Mod.
Intr. 18. Quod Testator fec' def. & al' Exe-
cut'

et non nominat in Brebi Repl quod
 Grece non nominat obiit ante Dig' p'as,
 Clif. 15. Bro. Red. 199.

R. **E**t petit Iudicium de Villa p'dia'
 quia dicit quod post mortem
 p'dia' J. H. scilicet (tali die & anno) apud,
 (Ec.) Administratio omnium & singu-
 loꝝ bonoꝝ & catalloꝝ jurium & creditoꝝ
 que fuer' p'dia' J. H. tempore mortis sue
 administrand' p'fat' def. & cuidam E. H.
 relicta' p'ed' J. H. p (Ec.) commissa fuit
 que quidem E. adhuc in plena vita exi-
 stit videlicet apud N. p'dia' in Com' p'dia'
 Unde ex quo p'ed' E. H. non nominatur
 in villa p'dia' Et quod villa illa casse-
 tur (Ec.)

For that ano-
 ther Admi-
 nistrator is
 not named.

Vide Clif. 15, 16. Plit' Gen' 2, 3, 6, 337.
 2 Mod. Intr. 18.

For that one of the Obligors is not named
 in the Writ.

R. **D**Ec. pet' Iudicium de Brebi p'dia'
 quia dic' qd ipse p'dia' def. simul-
 cum quodam J. S. de, Ec. (tali die &
 anno supradia') tenr' & obligat' fuer' p-
 dia' N. B. v p'dia' Scriptum obligato-
 rium in p'ed' 80 l. solvend' eidem quer'
 cum inde requisit' essent & ad eandem
 solutionem p'dia' def. & J. S. obligabe-
 runt se per idem scriptum prout per
 scriptum p'dia' hic in Cur' p'olat' plene
 apparet Et idem def. dic' qd ipse non
 obligabit seipsum separatim sine p'dia'
 J. S. sed conjunctim cum p'fat' J. S.
 p'fat'

prefat' A. B. p' pred' script' obl' Et quia idem J. S. in billa pred' non nominatur idem def. petit iudicium de billa p'dia' Et quod bill' ill' cassetur, &c.

Vide Clift 4. 7. 2 Mod. Intr. 17.

For that another of the Obligor's Heirs is not named with the Defendant.

ff. **E**t predia' A. B. p' (&c.) Attoꝝn' suum ven' & dicit qd' predia' J. W. habuit exitum predia' Elizabetham & quandam Mariam filias & coheredes suas que quidem Maria cepit in virum suum quendam C. S. gen' & iidem C. & M. huer' exitum inter eos R. S. postmodumq; predia' Maria apud W. p'd' obiit qui quidem R. est heres predia' M. ac idem R. adhuc superstes & in plena vita existit videt' apud W. p'red' versus quem quidem R. simulcum eodem A. B. predia' Elizabetha acconem suam predictam tulisse debuit & hoc parat' est verificare Unde ex quo predia' R. non nominatur in billa predicta Idem A. B. petit iudicium de eadem billa & quod billa illa cassetur, &c.

Vide Thomp. 9. vid. 1 Bro. 170. Dominat' heres de H. tantum ubi foret filius & heres H. & A. uxor' ejus.

For that the Defendants, as Executors have no Ad-ditions.

ff. **E**t predia' J. B. C. D. & E. F. p' (&c.) ven' & petunt iudicium de h'z' predia' quia dicunt quod apparet p' h'z' prediaum quod iidem A. C. & E. sunt & die impetraconis h'z' predia' fuerunt Executors Testamenti predia' W. C. p' quod h'z' predia' in hoc casu impetrari debeat pro predia' querente in hac forma

forma sequenti videlicet Precipe M. B. nuper de L. in Com' p'dia' Armig' C. D. nuper de P. in Cond' p'dia' Gen' & E. F. nuper de M. in Com' p'ed' Heom' Executozibus testamenti W. C. Gen' nuper dia' W. C. Gen' & non in eadem forma qua impetrat' existit Et hoc parati sunt verificare Unde per' iudic' de brevi p'ed' dia', &c.

ET p's Def. p J. S. Attornd suum ven' & petit Iudicium de brevi p'dia' quia dic' quod brebe illud vitiosum est in se & non impetrat' versus eundem R. secundum cursum Registri seu secundum formam & naturam brevis Und' Regis de Cn'sge Quia in eodem brevi apparet qd' hec verba sequen' sunt videlt' Ostensur' quare vi & armis clausum ip'sus C. apud P. fregit & herbam suam ad valentiam decem librarum ibm nuper crescen' pedibus ambulando conculcavit & consumpsit & averia sua ibidem invenerit & ad loca ignot' fugavit ut dic' ubi secundum formam & cursum Registri & naturam ejusdem b'ris brebe illud esset per hec verba Ostensur' quare vi & Armis clausum ip'sus C. apud P. fregit & herbam suam ad valentiam decem librarum ibm nup' crescen' pedibus ambulando conculcavit & consumpsit ac certum numerum equorum bobum vel ovium (eos nominando specialiter) & non p'edicta verba generalia videlicet averia cepit & ad loca ignota fugavit, &c. Unde ex quo brebe illud in forma p'dia' im-

For that the Writ in Trespass is not according to the Register. Vide postea.

impetrat vitiosum est idem ff. per Judicium de hzebi illo & quod idem hzebe cassetur, &c. Vide Rob. Ent. 1.

For that the Writ pre-
cedes the
Day of Pay-
ment.

ff. **E**t pzed Def. per (ff.) ven' & defend' vim & injur' quando, &c. Et petit auditum hzebis originalis pzed' Leonard' Et ei legitur in hec verba ff. Willus tertius Dei gra (ff.) [Accitand' totum hze] Quo lecto & audito idem Def. dicit qd pzed' Leonardus post consecutionem Bille pzed' & ante pzedictum vicesimum primum diem Novemb'ris in eadem billa superius specificat hze suum pzed' de debito pzedicto versus pzedat Def. impetravit Et hoc parat' est verificare unde petit judicium de hzebi illo, &c.

Aliter.

ff. **Q**uibus legis & audit' idem Def. petit auditum pzed' hris Originalis unde pzed' Quer' superius narrabit & ei legitur in hec verba ff. [Accitando totum hze] quibus legis & auditis idem Defend' petit Judic' de hzi pzed' quia dicit quod ante pzedictum festum Annunciat'ion hie Marie Virginis in Indorsamento pzedict' superius specificat cum pzedict' B. rulis hze suum Originale versus eundem Def. de debito pzedicto. Et hoc parat' est verificare unde petit judicium de hzebi illo, &c.

Vide p'lit' Gen. 246. & in Bro. 1. Bro. Red. 259.

Note, Then when the Writ bears *Teste* before the Action accrued, it abates *de facto* for De-

Default in the Original. *Anderson* 1. 241. 2.
96 See *Rast. Ent.* 459, *Co. Ent.* 624.

Quod h̄ve impetrat fuit ante cau-
sam Actionis. *Clif.* 10. 19.

Co quod h̄ve impetrat ante diem
Comparentie *Clif.* 18.

Co quod Administratio concessa fuit
alteri & non Def. *Clerk's Assist.* 105.

Co quod A. fecit T. & un' W. Exec &
Cravers quod A. obiit Intestat'. *Bro.*
Vad. 465. *Thomps.* 140.

Co qd S. obiit Intestat' & Admini-
stratio fuit Commissa Def. Repl' quod S.
fecit Def. Exec & Cravers quod S. obiit
Intestat'. *Clif.* 15, 16. *Pl. Gen.* 2, 3, 6.

Sile post Sequestracion' fact' per Or-
dinar' de bonis Intestat' *Pl. Gen.* 12.

Co quod Testator' die Exhibicion' Wille
fuit in vita, Repl' quod obiit ante diem.
Pl. Gen. 336. *Hans* 107. Cravers Repli-
cacion & Issue inde. Vide 1 *Lut.* 13. Et re-
spondi ouster agard' pur un Fault in the
Plea. Sile idem 16.

Co quod Testator' fecit quer' & al Exec
& Cravers quod quer' est solus Exec
Repl' quod Testator' fecit quer' solum Exec
Bro. Red. 200.

Co quod T. obiit Intestat' & Admini-
strat' commissa fuit A. & Cravers qd
Def. est Exec seu administrabit ut Exec
Thomps. 221.

Vide 2 *Lut.* 1642, &c. Debt upon a Bond
dated 27 Apr. 2 *Annæ Regin.* After Oyer of the
Original which was tested the First of April
in the same Year, Defendant pleads in Abate-
ment that the Writ was brought before the
Date

Date of the Bond ; *Repl'* That the Writ on which he declared was another Writ, which is entred in *hec verba*, and bears *Teste* after the Date of the Bond ; Rejoinder by Way of *Estoppel* for the aforesaid Reason of *Oyer* ; Demurrer with a Conclusion, as if the Plea had been a Bar, and Judgment for the Plaintiff.

In Debt against an Administrator, he pleads, that *W.* is Administrator *duram inin' Etat'* Demurr' inde *Et respond'* ouster agard for Default of the Averment, *Et hoc parat est verificare.* 1 *Lut.* 20, &c.

See 1 *Lut.* 29. Upon a Promise against an Executor, he pleads that he is Administrator by Letters granted by the D. of *Canterbury*, but adjudged ill upon Demurrer, because it was not said that the Intestate had *bona notabilia.* *Vide postea,*

Eo quod J. obiit Intestat' & Adm' commissa fuit Def. Repl' quod Def. ante Adm' commiss' Administrabit bona ut Exec' & Judic' pro quer'. 2 *Ventr.* 178.

Eo quod W. obiit Intestat' & quod Def. ceper' literas Adm' defunct' & sicut Adm' implitari debuer'. *Hansl. Ent.* 66.

Admr' p'litat' quod b'de Adm' per ipm obtent' revocat fuit. *Thompl.* 221.

Debt against an Administrator ; After *Oyer* of the Writ, the Defendant pleads that the Writ bears *Teste* before the Letters of Administration, and allowed a good Plea upon Demurrer. 1 *Lut.* 8, 9, simile id' 16. *Et Judic' quod b'v'de cassetur quia apparebat quod b'v'de Testat' ante Argent' fuit solubil'*

Et qđ Pars nominat in hęc qui non
agillabit Indentur'. Clif 4.

Quia Participes non nominantur in
hębi. Clif. 8.

Et quod Patronus non nominat' in
hębi cum Def. Demur' inde & nolle pro-
sequi per Attorn' General' Bro. Red. 410.
Clif. 23. 3 Lev. Rep. 15. simile 2 Lut. 1088.

Et quod sunt al Certeneid non nomi-
nat'. 2 Ventr. 103.

Ne Ven' fa ad Rd P'd Et Ven' fa de
novo agard, eo quod Precept' fuit Vic
S. ubi Erit' triari debet per hom' de
Civit' L. 1 Bro. 2.

Pro insufficienti retozn Original. 2 Mod.
Intrand. 12.

Et qđ non apparet per retozn hęc qđ
quer' inben' vic' pleg' proz. Rob. Ent. fo. 1.

Quod hębe retozn' fuit p nup vic' ubi
retozn' debet p nunc vic'. 1 Bro. 3. Cl. Ass.
7.

Quia vic' non habuit sufficien' autho-
ritat' retoznandi. Clif 5.

Quia hęc de Scir' fac' non dirigitur
Vic' Com ubi est Record' Judic'. Idem 11.

Et qđ hębe sozet scdm Cons' Regni
nostri Anglie, 1 Bro. 1. Hans. 103. Et non
scdm Legem Dñi R. & Dñe M. Regis &
Regine Anglie.

Et qđ nomen Ar' anteposit' nomini
viri in descensu. Reg. plic' 289. Clerk's
Ass. 13.

Et quod in trans' certus numerus
Aberioz non nominat'. 1 Bro. 1.

Et quod precept' fuit quod accederet
ali Cur' Manerit.

Et

Et non ad Cur' Dni Reg' Manerii.
 1 Bro. 7. Vide Abatement in Formedon p
 nū bis petit. 1 Lut. 851, &c.

In Debt in B. R. by Baron & Feme, Ad-
 ministratrix de bonis non, &c. against an
 Executor. After a special Imparlance, Defen-
 dant pleads that such a Day Administration
 was committed to her by the Vicar-General
 and Official of the Bishop of D. &c. Demur-
 rer thereupon, and Judgment against the De-
 fendand, because she had not traversed, that
 she had not administred before the Letters of
 Administration were granted. 1 Lut. 890.

For that
 there issued
 not forth a
Ca. Sa. before
 the *Scire Fac.*
 against the
 Bail in B. R.

ET p̄dīc' N. B. & C. D. p G. H.
 Attorn suū ven' & petunt Judic'
 de brevi de Scd fac' p̄dīc' quia dic' qd
 post reddicoñ Judicii p̄dīc' versus p̄fat'
 C. F. in forma p̄dīc' hīc & ante emina-
 coñ hīc de Scd fac' p̄dīc' versus p̄dīc'
 N. B. & C. D. nullum breve de Capias
 ad Satisfaciendū de & sup Judic' ill' p̄o
 p̄dīc' J. S. v̄sus p̄dīc' C. F. deho i no-
 do p̄secut' & retornat' fuit quod secundu
 cons Cur' fieri debuisset anteqm alig' iud
 breve de Scire fac' vers' p̄dīc' N. B. &
 C. D. emanasse debuit Et hoc parat'
 sunt verificare Unde per' Judicium Et
 qd breve de Scd fac' p̄dīc' cassetur.

Repl.

Et p̄dīc' J. S. dic' p qd aliqua p p̄
 dic' N. B. & C. D. in forma p̄dīc' p̄
 allegat' hīc de Scd fac' p̄dīc' cassari n on
 debet quia dic' quod post reddicoñ J
 dic' p̄dīc' versus p̄fat' C. F. in forma p̄
 dic' hīc & ante emanationem p̄dīc' v̄s
 de

de Sed fac vers' p'fat' A. B. & C. D.
scit (tñ die & anno the Day of the Teste of
the Capias) p'd J. S. e Cur' de' Und Re-
gis coram ipō Rege apud Westm' p'se-
cut fuit quoddam breve de Capias ad
satisfaciend' filius p'dia' E. f. tunc Die
A. direct' p' quad' quidm' breve d'us Dñus
Rex eisdem tunc Die London' p'cepit qd
caperet p'dia' E. f. si invent' fuisset in
Ballia sua & eum salvo custod' ita qd he-
rent corpus ejus coram d'co dñō Rege
apud Westm' die (Et.) ac ad satisfac' p'fat'
J. S. de C. l. necnon 10 l. que p'd J. S.
in Cur' dia' Und Regis coram ipō Rege
apud Westm' sustinuit tam orōne deten-
tōn' debi ille qm' p' mis' & custia' suis p'
ipum' circa secam suam in ea parte ap-
pōit unde p'dia' E. f. convia' fuit prout
constabat de Recordo Et qd p'd Die A.
herent ibi tunc breve ille quod quidm' bre'
de Capias ad satisfaciend' de & super
Judic' ille pro p'dia' J. S. filius p'dia'
E. f. de lo modo p'secut' fuit Et ante re-
tozñ ejusdem brevis p'fat' Die A. de ho
modo deliberat' fuit super quo p'd J. S.
ad p'fat' retozñ ejusdem brevis ven' in
pp' persona sua Et tunc Die A. videt
M. C. Mil & R. G. Mil ad diem ill' re-
tozñ qd p'dia' E. f. non fuit invent' in
Ballia sua prout p' p'dia' breve de C. l. Sd
& retozñ inde in eadem Cur' dia' Und
Regis coram ipō Rege apud Westm' de
Recordo remanen' asslat' plenius liquet
& apparet Et hoc parat' est verificare
Unde p'dia' J. S. pet' executionem p'dia'
deba & dampnis p'dia' in forma p'd de
E recogn

recogñ p̄textu recogniçionē pdict' sibi ad-
judicari, &c.

For that the
Original was
purchased
before the
Time of the
Trespas.

¶ **E**t pdict' A. B. & C. D. p̄ J. P.
Attozū suū vendē & defend' vim
& injuriam quando, &c. Et petunt au-
ditum hris Originalis pdicti & ei legi-
tur in hec verba, Illius tertius, (&c.)
[Et sic recita tot hys] Quibus lectis &
auditis iidem A. & C. petunt iudicium
de h̄ybi illo quia dicunt quod pdictus
G. ante pdictum tempus transgē illius
facte scit p̄mo die Septembris in
narracōe pdicta superius specificat h̄y
suū Originale de transgressionē p̄z-
dicta vsus eum impetrabit, Et hoc, (&c.)
Unde p̄r iudic' de h̄ybi illo, &c. 1 Mod.
Intr. 15. Clif. 19. & 1 Bro. 4.

Co qđ Baron & Feme tuler' h̄ybe
ante Matrimonium int' eos celebrat
Repl' qđ fuer' maritat' ante Orig' p̄zōs
1 Bro. 4.

For that the
Plaintiff be-
ing an Infant
has declar'd
by his At-
torney,

¶ **E**t pdictus Def. p̄ (&c.) Et petit
Iudicium de Narracōe p̄dicta
quia dicit qđ pdictus H. infra etatem vi-
ginti & unius annozū jam existit videli-
cet sexdecim annozū & amplius, Et quod
p̄fat H. p̄ J. B. Attozū suū in Cur'
hic in pdicto plito narrabit ubi p̄r
legem terre idem H. p̄ primum ami-
cum suū in Cur' hic admissum nar-
rasse debuit, Et hoc parat' est verifi-
care unde ex quo pdictus H. infra eta-
tem existens p̄ J. B. Attozū suū in
plito illo in pdicta Cur' narrabit idem
Def.

Def. petit Judicium de Parracone pre-
dica, &c.

Vide 1 Brown. 2 Bro. Red. 466, 477.
2 Saund. 209. Clift. 11.

Note, An Infant Plaintiff ought to sue by
his next Friend or Guardian ; and an Infant
Defendant must appear by his Guardian,
1 Cro. 161. *Hutt.* 92. unless he sue *in autre
droit*, as Executor.

The Defendant pleaded in Abatement to
an *Assumpsit* brought by several Executors
p *Atroyn*.

That Two of the Executors were under
the Age of Seventeen Years, and prayed
Judgment of the Bill: Plaintiffs demur, and
it was here resolved,

That the Action was well brought, and
cited the Case, *Yelv.* 130. where the Action
was brought by Bill, by an Executor which
had proved the Will.

And the Defendant pleaded, That there
was another Executor alive, not named in
Bill.

The Plaintiff averr'd, That the other Ex-
ecutor was within the Age of Seventeen Years;
and because he was not named in the Bill, it
was abated by Judgment.

It was also resolved, That where some of
the Executors are of full Age, and some with-
in Age, those of full Age may make an At-
torney for those within Age: And that in
Cro. Eliz. 541. an Infant Executor by Attor-
ney recovered, and in Error Judgment affirm-
ed. And in this Case, because the Defen-

dant's Plea was in Abatement, a *Respondeas Ouster* was awarded. *Vide 2d Part of Saund. fol. 212, 213. Vide Postea.*

Note, An Infant Executor ought to appear by his Guardian. 3 *Bulst.* 180 *Brigm.* 73, 74, 75.

If an Infant appear by Guardian, and impails to the next Term, yet he shall have his Age. 31 *E.* 4. 78.

Note, That after Imparlance one may not plead, That he was Administrator, and not Executor; but he may plead by Way of Bar, *Quod nunquam fuit Executor, &c. nunquam administrabit ut Executor, &c.* because that such Plea comes to the Action, and not to the Writ. 32 *H.* 6. 27. 35 *H.* 6. 36, 37. 22 *Ed.* 4. 36.

Also after Imparlance one is estopped to say, That he is Heir, (being charged in Debt as Son and Heir:) So to say, That he is a Bastard; and the same is of Outlawry, alleged in Disability of the Person. But he may have all Pleas in Bar. 35 *H.* 6. 36, 37.

For that the Property of the Goods is not in the Plaintiff.

ff. **E**t petit Iudicium de Narracione p̄dicta, Quia dicit qđ p̄p̄ietas bonorum & catallorū p̄dict' tempore captionis eorundem fuit cuidam C. patri ipsius defendi, Absq; hoc quod p̄p̄ietas bonorum & catallorum illorū p̄dicto tempore captionis eorundem fuit eisdem, Quod put ipsi per Narracionem suam p̄dict' superius supposuer, Et hoc, &c. Unde pet' Iudicium de Narr', &c.

Vide Bro. Red. 2. In Replevin p̄ virū & Ar' Barr, Quod p̄p̄ietas bonorū fuit viri

hiri tantum. Clerk's Assist. 9. Reg. placitat. 292. 2 Mod. Int. 17.

Note, That in Possessory Actions, where the Property does not come in Question, *Nul property* is no Plea: As in Trespass for taking of Goods, *Nul property* is no Plea; because the Possession is sufficient to maintain the Action. But 'tis otherwise in a Replevin; because the Possession cannot maintain such Action without he had Property in the Goods 20 H. 6. 18.

ff. **E**t p̄dict' C. C. per Attonem suum Property in a Stranger pleaded.
 veni & defendi vim & injur quant-
 do, &c. Et pet' Judic de brevi p̄dict' quia die quod p̄prietatis p̄dict' trium Aliter.
 vaccarum in Parr' p̄dict' superius
 specificat p̄dicto tempore quo, &c. fuit
 cuidam C. D. Absq; hoc quod p̄prietas
 illarum vaccarum eodem tempore quo, &c.
 fuit p̄fate C. D. put per breve p̄dict'
 superius supponitur, Et hoc parat est
 verificare, Unde pet' Judic de brevi
 illo, &c.

Note, In Replevin, *Norb* versus *Wildman*,
Quare cepit averia.

Defendant pleads in Bar, That the Property of the Goods were in him, and not in the Plaintiff.

Plaintiff Demurs, because it ought to be pleaded in Abatement.

Defendant joins in Demurrer; and Judgment for the Defendant; because it may be pleaded either Way.

Quod Emp̃eo fact' fuit per Def. & alium qui non nominatur in brevi. Vide 1 Bro. 8 Hans. 102.

Vide Quod post emp̃eō bonorū Defend' fec' Script' Obl' p secur' solutōē denar', Repl quod non fec'. Hans. 104.

For that there is no such Writ in the Register.

ff. **E**t predictus C. S. quando, &c. Et petit Iudicium de brevi predicta quia dicit qđ hđ illud malum vitiosum existit & non impetratur versus ipsum C. secundū cursum & formam Registri breuium Originalium in hac parte p̃vis quia dicit quod idem hđ impetratum est p̃ hec verba sequentia videt' Precipe C. S. quod iuste & sine dilone redderet p̃. III. duo Messuagia & sex Virgatas terre cum pertinē in L. ubi secundū cursum & formam Registri predicta terra peteretur p̃ certitudinem aerarum terre & non per certitudinem Virgat' terre p̃ut p̃ hđ illud impetratur, Et hoc, (&c.) Unde ex quo hđ illud in formā predicta impetrat' vitiosum est idem C. petit Iudicium de hđ illo, &c.

Vide Rob. Ent. 1. And see more at the End of this Division. Et Vide 1 Bro. 1. Quia in Ingressu pomar ponitur in brevi contra formam Registri scit' de terris petit' per dimidium Virgat' terre. Clerk's Ass. 8. 1 Bro. 3.

Vide Verbum (per) omis' in brevi & Iudic' inde, Cl. Ass. 2. Reg. placit. 191. In ingressu qđ Tenens ei desore, &c. omis'a

omissa sunt brevi, 2 Mod. Int. 12. Cl.
Ass. 14. See Vidian 90.

N. E predia' C. & L. p. C. H. At: For false La-
tozū suum veni & defendi Jus tin, super Bre-
suum quando, &c. Et dic qđ breve pre- ve de ingressu.
dia' vitiosum est in se & non impetratur
secundū cursum Registri eo qđ predia'
M. p. bzē suum predia' per vers' pdia' C.
& L. unum messuagium quod quidem
verbum messuagium est prozsus insen-
sibile & nullam habet significacionem
& per formam Registri debuit esse
messuagium, Qđq; hoc verbum reddat
in bzē pdia' pr' post dilaconem est in-
congruum latinum & debuit esse red-
dant, Qđq; (&c.) insertum in bzī pre-
dia' int' Annū Regni nrd & duode-
cimo est inutilis addico bzē pdia' & non
hetur in forma brevis in Registro in
humod casu edit' & pvis, Unde ex
quo breve predia' in forma pdia' im-
petrat vitiosum est pdia' C. & L. per
Judicium de brevi pdia', Et quod breve
pdia' cassetur, &c.

Et pdia' M. p. dia' Attozū suum dic Repl' & De-
quod p aliqua p pfat C. & L. in cassa. mur.
zon brevis pdia' superius placitando
allegat predia' breve ipsius M. cassari
non debet quia dic quod placitum pdia'
modo & forma pdia' pliat & materia
in eodm content minus sufficiend in lege
existit ad quod ipd necesse non het nec
p legem terre tenetur respondere, Et
hoc parat est verificare, Unde per Ju-
diciū,
E 4

dicium, Et qđ bñd aud pñ bonum adju-
dicetur, &c.

Joinder.

Tenentes jung in moꝛac: Et Respondi
Ousser de novo agard, Judic super-
inde pro Petend.

Et super hvebe de Erra p Tenend in-
ter al fuit argue, That the Original Writ
was ill, for the aforesaid Exceptions taken
against it. And the 18 Ed. 2. *Affise* 375. was
cited, where a Writ was debet & solet, pñ
debent & solet, and was therefore abated,
which was the same Case with the reddat for
reddant, 27 H. 6. 2. 6. A Writ of Affize
was abated for the Omission of the Word
[tunc.]

So 9 H. 7. 16. 6. Habeas ibi hos hvebe,
pro hac hvebe, made the Writ vicious; Sed
non allocatur, for per Cur', is amendable
by the Statute of 8 H. 6. cap. 12. Vide 2 Saund.
Rep. 38, 39. &c.

Vide Clerk's Aff. 2, 3, 14. Reg. placit. 292.
2 Mo. Intr. 11, 12.

A. B. versus C. D.

For that
there are not
15 Days
between the
Teste and
Retorn of the
Original.

Et modo ad hunc diem (scilicet sat
Retorn' Ann' Regis,) (Ec.) ven' tñ
pdia' A. per C. P. Attoꝛn' suum qñ
pdia' Def. per G. H. Attoꝛn' suum, Et
super hoc idem Def. die qđ satis li-
quet p hvebe Original inde impetrat'
qđ hvebe illud gerit dat' apud Westm
23 die Jan' Anno dia' Dñd Regis nunc
7 quod quidm hvebe retornabile & re-
toꝛn' fuit hic in pꝛefat' Crast' Puꝛ in
quem

quem quidam vicesimum tertium diem Januarii & predicti Cras Purificac sunt nisi duodecim dies in quo Casu predicti breve de dat predicti hic Retor non est sufficiens in lege ad ipsum Defensum in placito predicti ponendum respons, Et hoc parat est verificare per breve predicti hic ad hunc Cras Purificac retor — Defensum per licent querendum melius breve.

See for more Precedents on this Division, *Rast. Ent.* 49. *Co. Ent.* 320. *Hern* 7. 464. *Ast.* 5. 6. 322. *Thomps.* fol. 1. numb. 9. fol. 9. numb. 36. 1 *Brown.* numb. 1. 2, 3, 4. fol. 3. numb. 15, 16. fol. 4. numb. 1, 2, &c.

See also Division the 12th, for that the Action is ill founded.

Vide 1 *Lut.* 25. Because there were only Fourteen Days between the Teste and Return of the Scire Fac, and upon Demurrer held good.

6thly, Abatement, by Reason of Marriage, &c.

N. T. S. &c. sum fuit ad respondendum. *M. M. & Alcie Ur'* eius executrici Tes'ti *P. L.* Gen de placito quod reddat eis Centum libras quas eis iniuste detinet, &c.

N. E predicti C. per *A. B.* Attor non suum venit & petit Iudicium de brevi predicto quia dicit qd Matrimonium die Impetrationis hris Originalis

That the Plaintiff and his Wife were not married at the Time of the Original.

lis p̄dictorum W. & Alicie inter eos secundum legem Ecclesiasticam hujus Regni Anglie non fuit solemnizatum, Et hoc parat est verificare unde petit Judicium de brevi illo, &c.

Repl.
And Issue.

ff. **C**onari non quia dicit quod Matrimonium inter ipsos W. & A. diu ante diem impetrationis brevis Originalis ipsorum W. & A. scilicet vicesimo die Julii Anno Regni Domini Regis nunc, (&c.) sept. scdm legem Ecclesiasticam hujus Regni Anglie fuit solemnizatum videt apud C. p̄dicta, Et hoc petit qđ inquiratur per Patriam, &c. Jo, &c. Vide Hans. 103.

That the
Plaintiff
married after
the Writ.

ff. **E**t p̄dictus P. per C. D. Attorū suum venit & Defend vim & Injuriam quando, &c. Et petit Judicium de brevi p̄dicto, &c. Quia dicit quod p̄dicta Elizabetha post diem impetrationis brevis Originalis ipsorum C. W. & A. scilicet (tali die & anno) apud (&c.) cepit in virum quendam R. S. Gen qui quidem R. S. adhuc superstes & in plena vita existit videt apud (&c.) p̄dicta Et hoc parat est verificare unde petit Judicium de brevi p̄dicta, &c.

Vide 1 Bro. 7. 2 Mod. Intr. 7. Bro. Red. 181. 203, 204. Clif. 8. 14

Defendant pleads Covert Baron, and an Estoppel thereto, because of an Impar lance,
Et respondens Ouster Algard, because the
Plea

Plea was only in Abatement, and was not pleadable after Impar lance. *Vide* 1 *Lut.* 23.

R. **E**t p̄dia' M. per J. S. Attor^m suum ven^t & p̄t Judic^e de bill^e p̄dia' quia die q̄ ipsa tempore exhibicōⁿ bille p̄dē fuit cooperta de quod M. V. viro suo qui quidem M. V. adhuc supstes & in plena vita existit videlt apud C. in Com^u L. unde de quo p̄dē M. non noⁱatur in Villa p̄dē eadem M. per Judic^e de Villa p̄dē, Et q̄ Villa ill^e cassetur, &c.

For that the Defendant was married at the Time of the Bill exhibited.

R. **E**t p̄dia' Johanna per M. B. At^m tor^m suum ven^t & Defend^e vim & injur^e quando. &c. Et per Judic^e de brevi illo quia die quod ipsa eadem J. diem impetrat^e brevis Original^e ipsius R. p̄dia' cooperta fuit de quodam W. B. viro suo videlt apud S. p̄dia', Et hoc parat^e est verificare unde ex quo idem W. B. non nominatur in brevi p̄dia' eadem J. per Judic^e de brevi illo, &c.

Aliter.

For that the Defendant was married at the Day of the Writ.

R. **E**t p̄dia' R. die' q̄ breve suum p̄dia' ratione p̄allegat^e cassari non debet quia die, Quod eadem J. die impetrat^e brevis Original^e ipsius R. scilicet (tali die & anno) non cooperta fuit de p̄dia' W. B. viro suo p̄out p̄dia' R. Johanna superius allegavit, Et hoc per q̄ inquiratur per patriam, Et p̄dia' J. silit, &c.

Repl^r.

And Issue thereon.

R. Defend^e

Aliter. That the Defendant was Converted at the Time of the Writ with Traverse after Issue.

Defend' venit, & petit Iudicium de h'rebi p'dicta quia dicit qd ipse eadem Defend' die impetrationis h'rebis Originalis ipsius Quer' fuit cooperta de quodam P. R. viro suo videlicet apud P. p'dicta, Et hoc, (Ec.) Unde ex quo p'dicta P. non nominatur in h'rebi p'dicta eadem Defend' per Iudicium de h'rebi illo, Ec.

Repl' Qd' fuit sola.

Cassari non debet quia dicit quod p'dicta Defend' die Impetrationis h'rebis Originalis ipsius Quer' scilicet (tali die) apud P. p'dicta fuit sola, Abseq' hoc qd p'dicta defendens die impetrationis h'rebis Originalis ipsius Quer' fuit cooperta de prefat' P. R. viro suo prout p'dicta Defendens superius allegavit, Et hoc (Ec.) Unde ex quo p'dicta Defend' transge & Ejectionem p'dicta superius cogn' idem Quer' petit Iudicium & Possessionem t'mini sui p'dicta una cum dampnis, (Ec.) Sibi adjudicari, Ec.

Traverse,

Issue upon the Traverse.

Et p'dicta Defend' ut prius dic' quod ipsa die Impetrationis h'rebis Originalis ipsius Quer' fuit cooperta de prefat' P. R. viro suo prout eadem superius allegavit, Et hoc, (Ec.)

See Clerk's Assist. 5. 14. Leg. placit. 290. Placit. Gen. 4. 2 Mod. Int. 7. Hans. 104. Bro. Red. 203.

See also Rast. 326. Hern 5. Ast. 8, 9. Thomp. numb. 7. 1 Brown. fol. 4. numb. 20 fo. 7. numb. 31, &c.

Quod

*Quæ Quer' ante Orig' cepit virum,
Repl' quod fuit divor' causa precontract'
ante Orig' pos.* Rob. Entr. 3.

*Quia Defend' fuit cooperta tæe pmissi-
onis.* Clerk's Assist. 81. Clif. 5.

*Non cooperta cū viro plede in H^d
Inferior Court.* Clerk's Ass. 106.

*De Unques accouple in Loyal Matri-
mony.* Idem 78.

Note, That after Continuance, the Defen-
dant shall not be admitted to plead, That the
Plaintiff was made a Bishop; or that the Wo-
man Plaintiff took a Husband pending the
Writ, except that he plead it after the last
Continuance: But it is otherwise of the Death,
or where the Plaintiff was Covert at the
Time of the Writ purchased, because these
Pleas will abate the Writ *de facto*. 32 H. 6.
10. 6. 11.

So if after the last Continuance, the Plain-
tiff be made a Knight or Baronet, it seems
the Plea shall not abate. 1 Cro. 104. 371.
1 Ed. 6. cap. 7. 6 Co. 27. Hob. 129.

See after for Things done after the Writ
purchased.

See at the latter End for Things pleadable
after the last Continuance.

Note, That to a Declaration upon several
Promises in an Action brought by a Woman
after Imparlance, the Defendant pleaded that
the Plaintiff took *H. D.* to Husband after the
Purchase of the Writ, *Repl' qd non, Et
hoc petit, &c.* Demurrer inde, *Eo quod
non affirmatur quod Quer' fuit sola,
Et Judic' qd Def. respondeat.* Vide
1 Lut. 1639, &c.

And

And *Note*, That after Imparlanche the Defendant said That the Plaintiff was made a Knight at the Time of the Writ purchased; and it was adjudged a good Plea, although it was after a Continuance by Imparlanche. But it is otherwise after a Continuance by a *Dies datus*. 20 H. 6. 17.

By 32 H. 6. 20. it is said, That the Defendant after Imparlanche cannot plead, that himself was made a Knight after the Writ purchased; but he may plead, That the Plaintiff was made a Knight pending the Writ.

And 28 Ed. 4. fo. 9. says, The Writ is abated by Death, and abateable by Jointenancy; and where a Man is made a Knight, or a Woman takes an Husband, and the like: And saith. That where a Writ is abateable, if he imparl, or take Continuance, he cannot plead in Abatement. But otherwise it is, if it were abated. See 7 H. 6. fo. 16. & 20 H. 6. fo. 17.

And *Note*, It is pleaded there, That the Plaintiff is a Knight. 32 H. 6. 12.

Ad Quer' cepit in virum post ult' continuacionem, Resp' qd est sola, Placit. Gen. 4. Simile in Attaint, Idem 134. Sile post ult' cont' Will, Thomps. 1. Simile post ult' continuat Scie Fac & Demurr' inde. Vidian 77.

Op' quer' t're dicton' verborum fuit & adhuc est Ar' Def', Resp' qd non fuit nec est Ar' Def. & Exit inde. 1 Bro. 63.

7thly, Abatement by Reason of Death.

R. **E**t p̄dix' R. per J. S. Attorn
suum veni & protestando qđ ipse
in nullo est Culpabilis de transgē p̄dix'
put p̄dix' M. superius versus eum que-
ritur p̄ plito dicit quod p̄dix' W. un
Def. mortuus est & obiit ante diem im-
petrae h̄ebis p̄dix' M. p̄dix' videt apud
C. p̄dix' in Com p̄dix', Et hoc parat
est verificare, Unde per Judic de h̄ebi
p̄dix' (Ec.)

For that one
of the Defen-
dants died
before the
Writ.

R. **E**t p̄dix' M. die qđ h̄ebe suum p̄e-
dix' rone p̄eallegat Cassari non
debet quia die qđ p̄dix' W. die impe-
trae h̄ebis p̄dix' scilicet (tali die & an-
no) fuit superstes & in plena vita videt
apud C. p̄dix' & non mortuus put p̄dix'
R. superius allegabit, Et hoc per qđ in-
quiratur per patriam, (Ec.)

Repl' and
Issue.

Vide Bro. Red. 175.

R. **E**t p̄dix' Def. petit Judicium de
h̄ebi p̄dix', Quia dicit qđ post ul-
timam continuaconem placiti p̄dix' sci-
licet post p̄dictum Crastinum Sed Tri-
nitatis ultimo p̄teritum de quo die lo-
quela p̄dicta ultimo continuata fuit usq;
ad h̄nc diem scilicet ad p̄dictum Crasti-
num Animarum & ante eundem Crasti-
num Animarum scilicet primo die No-
vemb̄is proximo p̄terito p̄dictus Quer
apud S. in Com p̄dicto obiit, Et hoc pa-
rat est verificare unde petit Judiciū de
h̄ebi illo, Ec.

That the
Plaintiff died
after the last
Continu-
ance.

R. Et

Repl' By the
Plaintiff's
Attorney,
that his Ma-
ster is alive.

Issuc.

ff. **E**t p̄dictus Attoꝝn̄ p̄dicti R. no-
mine & pro ipso R. Magistro sua
dicit quod breve suum p̄dictum ra-
tione p̄allegat Cassari non debet quia
dicit qđ idem R. superstes & in plena
vita existit videlicet apud S. in Com
p̄dicto & non mortuus est put p̄dicta
Def. superius allegabit, Et hoc pro
eodem Magistro sua petit qđ inquirat-
ur per patriam, Et p̄dicta Def. similiter
Idco, &c.

Vide Bro. Red. 199. Clerk's Assist. 6, 7.
Placit. Gen. 7. Reg. Placit 293. In de bo
vers' 2 Adm, Quod unus Def. obiit
post ult' continuatōn'. Bro. Red. 175.

In Care Impedit p̄ Baron & feme,
quod Hr' obiit post ult' Continuatiōn
sine Exitu, Et Demurr' inde, Winch.
Ent. 771.

In Appeal, Quod frater seu Appellan-
tis fuit in vita tempore Appelli & obiit
post Appellum p̄os, Hans. 258. In
Formedon post visum & ultimam Con-
tinuatōn, un' tenen' obiit & licenc' dat'
querendi melius breve. Placit. Gen. 3.
Vid.

In Scire fac qđ un' Quer' obiit apud
D. Repl' qđ est Vibus apud S. Offi-
cium Brev. 345.

In trans' vers' A. & B. Non cur' per
B. & quod A. obiit ante diem impetrat'
bbis, Clerk's Assist 10. 2 Mod. Int. 15.

ff. Quando

N. Quando, &c. Et petit Judicium For that the
de Brevis predicto quia dicit quod Plaintiff di-
ante diem impetracionis brevis illius ed before
scilicet (tali die & anno) per quer apud the Original
H. in Com predicto obiit, Et hoc, &c. Unde
petit Judicium de Brevis illo, &c.

Vide 1 Bro. 4. 2 Mod. Int. 5. Qui quer-
rens obiit, post impetrat Brevis. Clif. 6.

See for Precedents on this other Division,
Rast. 107, 108, 126, 161. Ast. 8. 384, 416.
Thomps. 3. numb. 17. 1 Brown. fo. 3. numb. 11.
fo. 4. numb. 18. &c.

In Trespass against three, if one be dead Trespass a-
after the Writ purchased, the Writ shall abate gainst three,
in the whole. 7 E. 4. one dies.

In Trespass, the Death of one Jointenant, Death of
Plaintiff, shall abate the whole Writ. Other- Jointenant,
wise in Quare Impedit Audita Querela, Plaintiff.
and the like for the Necessity. Cro. Jac. 19.

Note, That Death or Coverture, at the Death or Co-
Time of the Writ purchased, does abate the verture at
Writ de facto; but Coverture after makes it the Time of
abateable. 36 H. 6. 11. 3 Bro. 138. Cro. Ent. 173. the Writ.
Roll. 108, 161, 126, 107.

Death of the Plaintiff, or one of the Death of a
Plaintiffs, abates the Writ. Rast. Ent. 416. Plaintiff.
F. N. B. 35. b.

And one Defendant may plead the Death One Defen-
of the other at or before the Writ purchased, dant pleads
or that there is no such Person in rerum na- the Death of
tura, 20 H. 6. 30 b. and the Writ shall abate; the other.
but it is otherwise where one of the Defen-
dants dies after purchasing the Writ. 18 Ed.
4. 1. 2 H. 7. 16. Rast. Ent. 126.

In Replevin
and Avowry
upon a
Stranger.

In Replevin, if the Defendant avow upon an Executor, the Plaintiff in the Replevin cannot plead in Abatement of the Avowry. 22 E. 4. 35. b.

In Personal
Actions
where is no
Severance.

In all Personal Actions where no Severance lies, there the Death of one of the Parties shall abate the Writ; but not if it be a Judicial Writ after Judgment. 10 Co. Read and Redman's Case.

Death of the
King.

In a Writ of **Quare Impedit**, or other Original Writs, the Death of the King before Judgment shall not abate the Writ **de facto**; but it is otherwise where the Defendant dies. So in an Information for the King, or for the King and the Informer, upon the Death of the King before Judgment, the whole Proceedings are discontinued; but the Information it self shall stand good, and Process shall be awarded against the Party **de Novo**. So of Indictments (that are not for Felony or Treason), for after Trial they are within the Statute of 1 Ed. 6. cap. 7.

One dies in
Action a-
gainst two.

In Account against two, one dies after the first Judgment, the Writ shall abate only against him.

Husband
dies.

In Trespass against Husband and Wife, if after Verdict, and before the Day in Bank the Husband dies, it is doubted if the Writ shall abate; but agreed, that if the Wife dies, it shall not abate against the Husband.

Wife dies.

In Writ of
Error.

So in case of Slander by the Wife, the Writ shall abate after Verdict. Cro. Car. 509. Hob. 129.

In a Writ of Error, the Death of one of the plaintiffs shall abate the whole Writ. 3 H. 6. 23.

Sthly. Abatement for *Misnosmer* and *Misprision*

¶ **E**t R. J. in ppd pson sua ven, Et die qd ipse est eadem persona versus quam pdia quer tulit bzebe suum pdia per nomen Roberti Johnstone, Et defendi vim & injur quando, &c. Et die qd ipse vocatur & cognoscitur p nomen R. Johnson & non p nomen R. Johnstone put p bzebe pdia supponitur, Et hoc parat est verificare, Unde per Judic de brevi pdia, &c.

For that the Plaintiff's Sirname is misnamed.

Et pd quer die qd bzebe suum pdia ratione pallegat cassari non debet, Quia die qd pdia R. Johnstone qui modo comparet, &c. est eadem psona versus quam ipse tulit bzebe suum pdia & vocatur & cognoscitur tam per nomen R. Johnstone, quam p nomen R. Johnson, Et hoc per quod inquiratur p patriam, Et pdia R. Johnson sit, &c.

Repl.

Vide Reg. Placit. 288. Thomps. i. i Bro. 3. Et vide Clerk's Man. 435. Hans. 119. Et vide postea.

¶ **E**t pdia W. & quedam E. Ur ejus in ppria persona sua ven & die quod pdia E. per Vic Com pdia fund fuit per nomen A. Ur ejusdem W. prout per bzebe pdia supponitur, Et hoc, &c. Unde ex quo pdia E. in brevi pd superius specificat nominatur A. & non E. iidem W. & E. per Judicium de brevi ill, &c.

For that his Wife is misnamed

De Christian Posme. Vide Cl. Ass. 12.
Reg. Placit. 289. Thomps. 1. Placit. Gen. 8.
2 Mod. Int. 12. Clif. 16.

Abatement pleaded severally by Three
Defendants.

ff. **A** B. nuper de J. Ec. Gen C. D.
nuper de R. (Ec.) Neom & C. f.
nuper de L. Ec. Neom attach fuer, Ec.
G. H.

First pleads
two of the
same Name,
and no Di-
stinction,
which is
meant.

Et A. B. nuper de J. in Com pre-
dia' Gen C. D. nuper de M. in Com
pdia' Neom & C. G. nuper de C. in
Com predia' Neom in propi pson suis
veniunt, Et separatim dic qd ipsi sunt
cedem pson versus quas pdia' G. H.
tulit hze suum pdia' per nomina (Ec. as
in the Narr) Et idem A. B. dic qd in
pdia' Villa de J. duo habentur viri
vocati & cogniti per noia & cognosia
A. B. sed Gen & A. B. jun Gen,
Quos ipse semper a nativitate sua huc-
usque nominatur A. B. jun Gen, Et
hoc paratus est verificare, Unde ex quo
non apparet in brevi pdia' vers quem
eordm A. B. sed & A. B. jun idem
breve impetrat est idem A. B. jun per
judicium de brevi illo, Ec.

The Second
pleads *Non
commorans*,
and that the
Place in the
Writ is no
Vill or Ham-
let, &c.

Et idem C. D. de M. pdia' dic qd ip-
se die impetracois brevis pdia' fuit
comorans & conversans apud Villam
de M. pdia, Absq hoc qd ipse unquam
fuit comorans apud R. pdia' puc p
breve pdia' supponitur, Et ulterius dic
qd pdia' locus voc R. est in pdia' Villa
de

de M. Et est nulla Villa p se nec Ham-
lettus neque locus extra Villam &
Hamlettum, Et hoc paratus est verifi-
care, Unde ex quo ipse non nominatur
in brevi p̄dicta de aliqua Villa sive ali-
quo Hamletto vel loco cognie extra Vil-
lam vel Hamlett in quo vel qua idem
C. D. fuit comorans seu conuersans die
impetracionis h̄is p̄dicta vel antea se-
cundm formam Statuti de addicionibus
nominum & cognominu in b̄vibus in
quibus process utlagat jacet imponendū
edit & probis per iudicium de brevi
ill, &c. Vide Clerk's Assist. 3. 13. Reg.
Placit. 287. Vide Postea.

Stat. 1 H. 5.
cap. 5.

Et idem C. D. die qđ ipse nominatur
& vocatur C. D. & p nomen & cognom-
en ill a tempore nativitatis sue huc-
usq semper cognit & vocat fuit, Et non
p nomen C. F. prout p brebe p̄dicta sup-
ponitur, Et hoc parat est verificare,
Unde per iudicium de brevi ill, &c.

The Third
pleads *Mis-
nofmer* of his
Surname.

Vide de Surnofme, Thomps. 1. Clerk's
Assist. 103. Placit. Gen. 7. Hans. 119.

ff. Et p̄dicta C. p (&c.) Attoꝝ suum
ven & defendi vim & injur quando, &c.
Et petit iudicium de billa p̄dicta quia
die qđ ipse nominatur & vocatur per
nomen C. D. & p idem nomen a tempore
nativitatis sue semper cognit & vocat
fuit, Absq hoc qđ ipse vocatur per no-
men C. C. seu p idem nomen cognit &
vocat fuit, Et hoc parat est verificare,
Unde petit iudicium de billa p̄dicta, Et
qđ billa illa cassetur, &c.

For misna-
ming the De-
fendant's Sir-
name, calling
him C. T. in-
stead of C. D

See after concerning the Surname. *Ed vide*
1 Lut. 10.

Repl^s, That
 he is, and al-
 ways was cal-
 led C. T.

*ff. Et p^odia' quer dicit qd p aliqua p
 p^odia' Def' superius p^olitando allegat'
 billa sua p^odia' cassari minime debet
 quia dic' qd idem C. nominatur & voca-
 tur C. T. & per idem nomen a tem-
 pore nativitatis sue semper cognit' &
 vocat' fuit put p bill' p^odia' suppo-
 nitur, Et hoc petit quod inquiretur p
 p^oriam, Et p^odia' C. sinit, &c.*

*Quia Scriptum fac' fuit Patri jam
 defunct' & non filio ejusdem nōis. Clift 7.*

For misna-
 ming Defen-
 dants's Chri-
 stian Name.

*ff. Et J. P. p C. S. Attorn suum
 veni & defendi vim & injur', &c. * Et
 petit Judicium de billa p^odia' quia dic'
 quod ipse est & a tempore nativitatis
 sue hucusq' semper cognit' & nominat'
 fuit per nomen & cognomen J. P. abs-
 que hoc quod ipse idem J. modo est vel
 unquam fuit cognit' vel nominat' p
 nomen & cognomen C. P. put p billam
 p^odia' superius supponitur, & hoc, (&c.)
 Unde petit Judicium de billa p^odia' & qd
 billa illa cassetur, &c.*

Vide 1 Lut. 10.

** Quere of this, and if ought not to say, Et dic'
 qd ipse est eadem person', (&c.) as before.*

For that the
 Defendant is
 named of S.
 which is a
 Place in E.
 and no Vill
 or Hamlet,
 &c.

*ff. Et R. W. de E. in Com p^odia'
 Butcher, in pp^o pson sua veni & dicit qd
 ipse die impetratōn h^ois p^odia' fuit com-
 morans & conversans apud Villam de
 E. in Com p^odia' & est eadem psona
 persus*

versus quam p̄dicta' C. p nomen R. W.
de S. tulit h̄re suum p̄dicta', Et defendi
vim & injur' quando, &c, Et dic' qđ p̄
locus voc' S. est in p̄dicta' Villa de C. &
est nulla Villa p se nec Hamlettus neq
locus extra Villam & Hamlettum, Et
hoc parat' est verificare, In quo Casu
idem R. in h̄rebi p̄dicta' nominari debu-
isset de p̄dicta' Villa de C. Unde cum sic
non nominatur secundū formam Sta-
tuti de additionibus cognominum in
Brevibus sup quibus p̄cessus Atla-
garie jacet imponendi petit judicium
de h̄rebi p̄dicta', &c.

Secundum
Stat.

*Vide Reg. Placit. 287. Clerk's Assist. 13. Vide
1 Lut. 35. One of the Defendants pleads, that
the other being outlawed was misnamed in
the Addition of Junior for Senior. Demurrer
thereupon, and Judgment, quod respondet
Ouster, because one may not plead the
Misnomer of his Companion.*

Quibus lectis & auditis idem
R. G. W. per ——— Attorn suum
defend' vim & injur' quando, &c. Et om-
nem felon, Et quicquid, &c. Et petit
Judicium de Brebi Originali p̄dicta' quia
dicit quod ipse idem G. W. per brebe
illud appellat' existit p nomen G. W.
nuper de paroch Sancte Anne Westm
in Com Midd Gen ubi revera & in
facto infra Com Middlesex' p̄dicta' est
quedam Paroch vocat' & cognū per no-
men (Paroch Sancte Anne infra liber-

For misna-
ming the
Parish.

* *Quere, If this ought to be pleaded by Attorney,
8 H. 6. 9. 21 H. 6. 27. Vide Postea.*

rat' Westm sed in eodem Com Midd non
habetur nec die impetrat' Brevis Ori-
ginalis appellat' p'd seu unquam habe-
batur aliqua Paroch Villa sive locus
cogn' & nuncupat' p nomen (Paroch
Sancte Anne Westm) tantum put p'dia'
E. per Breve suum p'd superius suppon'
Et hoc ipse idem G. parat' est verificare
Unde petit judic' de h'i illo Et q'd breve
p'd Cassetur, &c.

For that
there are two
Vills called
T. and nei-
ther without
Additions.

ff. **E**t p'dia' Def. p---*--- Attorn suum
ven' & dic' q'd in Com S. due ha-
bentur Ville vocat' C. videlicet North C.
& South C. & neutra ear' sine addic'one
absq' hoc q'd in eodem Com habetur ali-
qua talis Villa Hamlett sive locus cog-
nit' extra Villam vel Hamlettum vocat'
vel cognit' C. tantum sine addic'one put
p h're p'dia' supponitur Et hoc parat'
est verificare Unde petit judicium de
breve illo, &c.

* Q as before.

Repl.
That there is
Vill T. with-
out Addition

ff. **C**assari non debet quia dicit q'd in
Com p'dia' habetur talis Villa
vocat' C. sine addic'one put p breve p'd
supponitur Et hoc petit q'd inquiratur
p priam. &c. Vide Clerk's Ass. 4. 1 Bro. 2.
1 Mod. Intr. 341, 343.

See for Precedents, *Rast.* 47, 68, 79, 108,
159, 362, 615, 646. *Ass.* 3, &c.

Misnosmer
after Im-
parlance,
and when.

Note, It is held by some, That after Impar-
lance one may plead *Misnosmer* of the Place,
if it be not Parcel of the Name; as if the Wrie
be

be *Precipe qu reddat Manerium de D.*
in *D.* the Tenant after Impar lance may say,
Nul tiel ville D. within the said County:
But if the Defendant had been named *J. S.*
of *D.* and after imparl, he shall not say, *Nul*
tiel Ville D. because that *D.* is Parcel of
the Name, and comes in Abatement. 13 *H.*
7. 17. 15 *H.* 7. 14. 16 *H.* 7. 17. 20 *H.* 7. 13.
9 *E.* 4. 3. 35 *H.* 6. 5.

Not when
Parcel of the
Name.

After Impar lance, an Attorney for the Cor-
poration shall not plead that they are corpo-
rate by another Name.

Yet it's said, that if one be named of *D.*
at another Term, he may say that there are
Two *Villes D.* and neither without Addi-
tion. 32 *H.* 6. 30. And so 18 *Ed.* 4. & 9. up-
per *D.* and nether *D.* and nul sans Addition;
but *vide* 21 *E.* 4. 1. *b.*

Two *Vills D.*
and neither
without Ad-
dition.

It's said, that if the Defendant plead *Misno-*
mer, and the Plaintiff imparls, and at anc-
ther Day the Defendant makes Default, yet
the Plaintiff shall recover upon that Default
notwithstanding his impar lance; and no *Di-*
stres ad manutenuu placitum shall issue;
and the same Law is if he had pleaded in Bar;
but in a real Plea, a *petit Cape* shall issue.
32 *H.* 6. 29. 7 *H.* 6. fol. 30. 39 *H.* 6. 17.

Plaintiff im-
parls, and
Defendant
makes De-
fault.

And that every Default after Impar lance is
peremptory; and if it be in a real Action,
Seisin of the Land shall be awarded, and so
upon *Voucher*. 38 *H.* 6. 33. And by 39 *H.* 6. 15.
that it is peremptory in Debt, and so in a
Precipe on a *Voucher*.

Default after
Impar lance,
peremptory.

3 *H.* 6. 8. The Defendant was named of *G.*
and says, that in the same Vill are Two Gates,
scilicet, *Eastgate* and *Westgate*, and neither
without

Two Gates
G. and nei-
ther without
Addition.

without Addition; *Quære* if he may not say, *Dul tiel Ville*. 3. H. 6. 8,

Note, That regularly no Man shall plead *Misnosmer*, but the Party himself. 21 H. 6. 27. *vide* 8. H. 6. 9.

Who may
plead *Mis-*
nosmer.

So that no Action be brought against many, one may not plead *Misnosmer* of the other; but he may plead *Dul tiel in rerum natura*. 22 E. 4. 45. a. & 21 Ed. 4. 71. b. and with this agrees 35 H. 6. 50. in *Transf*.

Who not.

So in an Action brought against Husband and Wife, altho' they be one Person in Law, yet one of them may not plead *Misnosmer* of the other. 6. Co. 64. b. *Finch's Case*.

That his
Wife is na-
med M. and
not E.

In Trespass against J. and E. his Wife; he appears and says, that his Wife is named M. and not E. 22 H. 6. 45. a.

Misnosmer of
Name of
Baptism.

By the 3 H. 6. 26. it's laid in all Cases where the Name of Baptism is mistaken (if it be not in the Case of Felony) one may plead *Misnosmer*; but it is otherwise of the Sirname, and in this Case the Party is not in any Mischief, for he may have a Writ of Deceit; yet it is there may be a *Quære* in Case of an Obligation.

Of Sirname.

But this it seems to be held otherwise, for there are many Precedents in Abatement for misnaming the Sirname, as that he is called C. B. and not C. D. *Rast. Entr.* 49, 50, 54, 108, 296, 334, 516, *bis* 610. *Ash.* 1.

Misnosmer in
Trespafs.

Misnosmer in Trespass shall not abate the Writ, but only against him that pleads the Plea. 5 Ed. 4. 2. 2 H. 7. 16. 23 H. 6. 23. *Rast. Entr.* 107.

Misnosmer in
Addition.

For *Misnosmer* and Default in an Action, 8 Co. *Blackmore's Case*.

Mis-

Misnosmer in a *Scire Facias* shall abate the *In Scir. Fac.* Writ. 9 Ed. 4. 35.

In a *Præcipe* against *J. E.* the Son of *W. Esmond*, at the Return of the Grand Cape, the Defendant said his Father was named *Edmond*, and by *Thorpe* it is said to be a good Plea in Abatement of the Writ, before the Default saved. 40 Ed. 3. 2.

In *Detinue* of Charters against *J. C.* the Writ was *Præcipe J. C. fil & Hered R. C.* and Counts of a Bailment to the Defendant himself, 'tis no Plea for him to say, that he is Son and Heir to *W. C.* and not to *R. C.* because he is not charged as Heir, but of his own Possession. 10 E. 4. 12. a. by the better Opinion.

Where one is misnamed and outlawed, the Purchase of a Pardon shall not stop him to plead *Misnosmer*. 21 H. 6. 7.

He that renders himself to the Exigent, or *gratis* to the *Capias* or *Pone*, may plead *Misnosmer*. 19 H. 6. 43. And by 3 Ed. 4. 15. by the better Opinion, when a Man comes in *gratis*, he may plead *Misnosmer*; but if one comes in by *Capias* or Distress of his Goods, or by Summons of his Land, without question he may plead *Misnosmer*, for the Trouble that he had of his Person, Goods or Lands. *Vide* Ed. 4. 18. a. 21 Ed. 4. 78. a. 21 H. 7. 8.

So in a *Præcipe* to the Grand Cape one may say, that his Lands were seized by the Name of *R.* and that his Name is *J. &c.* 22 H. 6. 45.

W. S. was bound in a Bond by the Name of *J. S.* and an Action upon that Bond was brought against him by the Name of *W. alias dict. J.* The Defendant pleaded *Non est factum*, and the Matter was found by Special Verdict

In a *Præcipe*

In *Detinue*

Misnosmer,
Outlawry
and Pardon.

Misnosmer
upon appearing
gratis.

A *Fortiori*
when by *Capias*
or Distress

Upon a *Præcipe* to the
Grand Cape.

On Bond the
Party ought
to be sued as
misnamed.

Verdict. Adjured, That the Plaintiff should not recover, for the Action should have been brought against him, by the Name of *J.* as he was named in the Bond, and he shall be estopp'd to say that his Name was *W.* 11. *El. Dyer* 279.

Estoppel.

The Party himself must plead it.

Note, That the Misnaming of the Place is not pleadable by Attorney, but ought to be pleaded by the Party himself. 8 *H. 6. 9. Vide* 21 *H. 6. 27.*

When not pleadable after a *Superfedeas*

Addition of Place not necessary.

Where necessary.

J. S. of *T.* near *F.*

If one takes out a *Superfedeas*, he shall not afterwards plead *Misnosmer* of the County where he was living. 19 *H. 6. 65.*

In Actions where no Addition is necessary, *Misnosmer* of the Place is vicious. 21 *H. 6. 54.*

In Replevin, *Misnosmer* of the Place is material, otherwise in Battery. 2 *H. 6. 14.*

In an Action brought against *J. S.* of *T.* near *F.* 'tis no Plea for him to say, that he is dwelling at *T.* in *F.* without that, that he ever dwelt at *T. juxta F.* — But it is a good Plea for him to say, that there is *T.* in *F.* & *T. juxta F.* and that at the Day of the Writ &c. he was living at *T.* in *F.* without that, that he was ever dwelling at *T. juxta F.* 21 *E. 4. 75. a.*

How the Defendant ought to conclude.

In Trespass against one *J.* of *F.* the Defendant said, that at the Time of the Writ purchased he was dwelling at *D.* in *Kent*; it is no Plea, for he ought to conclude, and not at *F.* 19 *H. 6. 1.* but he shall not do so after he hath affirmed the Name by Impar lance. 35 *H. 6. 37.* And 32 *H. 6. 35.* says, the Defendant after Impar lance cannot plead that he is dwelling at another Place than is in the Count.

ff. Def.

ff. **D** Et. veni & dicit quod non habetur *Nul tiel per-*
 nec die impetraconis hys *son' in rerum*
 ginalis pñ nec unquam postea hebatur *natura.*
 aliquis talis psona vocat J. P. in re-
 rum natura qualis p hñ pñ superius
 supponitur Et hoc parat est verificare
 Unde petit iudicium de hñi illo, &c.

Et pñia' J. B. Attorn pñia' quer no- *Repl.*
 mine & p ipso quer' Magro suo dicit qñ *By the Plain-*
 (Et.) Cassari non debet quia dicit quod *tiff's Attor-*
 hetur & die impetraconis hys *ney.*
 ginalis pñia' scilicet (tali die) hebatur &
 adhuc hetur talis persona vocata J. P.
 in rerum natura qualis p hñ pñia' su-
 perius supponitur videlicet apud (Et.)
 Et hoc idem Attorn pñia' quer' p eodem
 quer' pet qñ inquiratur per priam Et
 pñia' def. silit' J. B. &c.

Vide Placit. Gen. 8. & 2 Mod. Intr. 13.
 See Rast. 49. 611. Aston 10. 1 Brown. fol. 8.
 numb. 32.

ff. **E** t pñia' G. & H. p — Attorn *Nul tiel Vill'*
 suu veni & pet' Iudicium de hñi *vocat K,*
 pñia' quia dicit qñ in Com pñia' non
 habetur nec die impetraconis hys *Orig*
 pñia' R. hebatur aliqua talis Villa sive
 Hamlet' vel locus extra Villam & Ham-
 let cognit' vel vocat' p nomen de R. put
 pñ R. p hñ suum pñia' superius suppo-
 nit' Et hoc (Et.) Unde petunt Judi-
 cium de hñi illo, (Et.)

Et pñia' R. dicit qñ hñ suum pñia' *Repl.*
 raone pallegat Cassari non debet quia *Quod est Vill'*
 dic quod in Com pñia' habetur & die *vocat. K.*
 im,

impetracionis huius Originalis ipsius R.
scilicet (tali die) habebatur Villa cog-
nit & vocat' p nomen de R. put ipse p huius
suum predictum supponit Et hoc per quod
inquiratur p priam, (Ec.)

Vid. Rast. 108. Vide Misnosmer de Vill.
Rob. Ent. 285. 2 Bro. 165. Clerk's Assist. 313.
Propter defectum addicton Will' vel Ham-
let'. Cliff. 15. 16. Pur misprison de Pa-
roch. Bro. Red. 2. 2 Mod. Intr. 19. 1 Bro. 2.

Nul tiel in rerum natura.

Upon Bond
to stand to
Arbitra-
ment.

IT is said, if one be bound to stand to the
Arbitrament of J. S. in Debt upon Bond,
Nul tiel J. S. in rerum natura, at the Time of
the Submission, is no Plea. 18 Ed. 4. 4.

But in Action brought against many, one
may plead *Nul tiel in rerum natura* as to the
others. 22 Ed. 4. 45.

In Appeal.

In an Appeal against many, *Nul tiel in rerum
natura*, as to one is a good Plea; and altho'
there be such an one in another County,
yet it is a good Plea; but if one such be in
the same County where the Vill is, it is o-
therwise. 21 H. 7. 31. 27 H. 8. 26. 18 Eliz.
Dyer 348, 349. *Vide infra*.

In Trespass.

In Trespass against Three, upon an Assault
and Battery in one Vill, one may plead *Nul
tiel in rerum natura* as to one; but not *Misnos-
mer* of the other. 35 H. 6. 50.

Three im-
parl jointly,
Two, &c.

It is said, that if Three imparl jointly, and
Two demand Judgment of the Writ, because
there is *Nul tiel in rerum natura* as to the Third.
By the Court, they shall not have such Plea,
because the Imparlance was joint; but it's
said

said to be otherwise, if the Imparlance had been several. 4 H. 7. 17. So that if Three im-
parl jointly, and one makes Default, the other
cannot plead no such in Being, as one which
makes Default.

In *Quare Impedit* against Two, one pleaded that there was no such Church, as it was na-
med in the Writ. The other pleaded that there
was no such Bishop of *Lincoln*, as was named :
And Issue was joined upon the first, and a
Demurrer upon the Second Plea ; and the
First being found for the Defendant, the
whole Writ abated. *Hob. 250.*

In an Appeal against Two, *Nul tiel person.* In Appeal.
in rerum natura as to one, shall abate the whole
Writ, [otherwise of the Death of the one, as
it seems] but it is otherwise in Assise or Writ
of Dower, as in *Pollard's Case.* *Com. 89. b. Vide*
supra.

If Trespass be brought against Three, and
one saith there is no such Name *in rerum*
natura as the third Person's Name. If it be
found, the Writ shall abate in the whole, *per*
7 Edw. 4.

In Trespass in *F. and H.* the Defendant said,
That there is no such Vill or Hamlet in the
said County ; and the better Opinion was,
That this Plea shall abate the whole Writ.
And yet *quare* how it should have been tried,
for it seems by a Jury of the Visne of *F. 4. E. 4.*
33. a. Co. Litt. 155. b. Rast. Ent. 108, 298.
Co. Ent. 121.

It's also said, That *Nul tiel Vill* ought to be
pleaded to the first Name, and therefore *Nul*
tiel Vill named in the *Alias dit'*, is no Plea.
21 E. 4. 15. a.

In

n a Scire
Fac.

In a *Scire Facias* to execute a Fine of Lands in *D. Nul tiel Vill* is no Plea; because the Fine shall be made void by such Plea. 2 *Ed.* 4. 51 *b.*

In Avoid-
ance of an
Outlawry.

If one say in Avoidance of an Outlawry, that he is of *W. absque hoc* that he was living at *D.* he may afterwards say, *Nul tiel Vill D.* in the same County; because the Confession of one Thing not material, shall be no Estoppel 22 *Ed.* 4. 38.

After Impar lance the Defendant may say, That the Plaintiff in his Declaration has not shewn where the Bond was made. 4 *Ed.* 4. 14. *b.*

For that he
is and was
a Chapman,
and not a
Husband-
man.

ff. **E**t dicit qđ ipse est & die impetra-
conis hris Original ipius M. &
semper antea fuit Chapman & non Hus-
bandman put per hre pđ superius sup-
ponitur & hoc parat est verificare Unde
ex quo ipđ non nominatur in certo my-
sterio de quo idem Def. est juxta formam
Statuti de additionibus Nominum &
Cognominum in hrebibus in quibus p-
cessus Atlagat jacet edic & pvis idem
defend peti Judicium de hrebi illo, &c.

Repl.
That he was
a Husband-
man.

Et pđ M. dicit qđ hre suum pđictū
racione palleget' cassari non debet quia
dicit qđ die impetraconis hris Orig ip-
sius M. scit (tali die & anno) pđ Def.
fuit Husbandman put p hre illud sup-
ponitur Et hoc pet qđ inquiratur per
patriam (&c.)

Vide 2 Mod. Intr. 12. Quod Def. est
Neom & traverse quod est Gen. Plie.
Gen. 4.

Qđ

Ad Def. est cogn' p nōem T. Gen' Et
traverse qđ est cogn' per nōem T. Broker.
Rob. Ent. 91.

Quod Hroz per Maritag' amisit nōem
Dignitatis. 1 Bro. 3.

Quod Def. est Gen' & non Medicine
Docto. Clif. 16.

Quia partes sunt filie W. & non ejus
Soroꝝes. Idem 22.

If a Man pleads, that he had another Addi-
tion than is given him, he ought to say, The
Day of the Writ purchased. 11 H. 6. 11. a.

Et pđ Tenens, dicit qđ pđ Petens est Tenant
Miles & fuit die impetrac' hys pđ An- pleads, That
de ex quo idem Petens non nominatur the Deman-
Miles in brevi pđ idem tenens per Ju- dant is a
dicium de brevi ill, &c. Knight.

Et pđ A. p J. S. Attorñ suum ven' & For that the
per auditum pꝛedict' brevis de Scđ fac Defendant
Hus eid impetrac' Et ei legitur (&c.) Quo was no Baro-
lco & audito idem A. per Judic de brevi net, but on-
ill quia die qđ ipđ idem A. die emananc ly Knight,
pđ brevis de Scđ fac non fuit Baronet- &c.
tus put p brebe pđ superius supponitur
Et hoc parat est verificare Unde ex quo
pđ A. p brebe nominatur Miles & Ba-
ronettus idem A. per Judic de brevi
pđ, &c.

See Rast 108, 298, 570. Ast. 2. Reg. Pla-
cit. 287. Cl. Ass. 1. Def. est Baronettus &
non Miles. 1 Vent. 154. Clif. 17.

A. Def. dicit qđ ipđ die impetrac' hys Pro non com-
pđ fuit commorans & conversans moranc.
apud B. in Com A. Absq' hoc quod ipđ Vide ante Mis-
nosmer &
un- Misprison.

unquam fuit commozans seu conſilans
apud B. pñ put p bñ pñ ſupponitur
Et hoc (Ec.) Unde petit Iudicium de
bñvi illo, &c.

Vide 1 Bro 6. Cl. Affist. 13. Hanſ. 268.

After Imparlance he ſhall not ſay, that he
was living at another Place; as that whereas
he is named of D. that he lives at S. without
that, that he lives at D. 31 H. 6. 13.

One of the
Executors
pleads, That
he was of D.
the Day of
the Writ.

In Debt againſt Two Executors; one ſaid,
That whereas he is named of S. that he was
of D. the Day of the Writ purchaſed, and
prays Judgment of the Writ; and agreed,
That if the Plea was found for him, that the
Writ ſhould abate againſt both, and yet the
other ſhall answer; but the other Plea ſhall be
firſt tried. 21 Hen. 6. 4. Raſt. Ent. 108, 295,
298, 299, 160.

How the De-
fendant
ought to give
the Plaintiff
a better Writ

It is ſaid, That when a man pleads in
Abatement, he ought always to give the Plain-
tiff a better Writ, as in Ejectment, for Forty
Acres of Land in S. The Defendant pleads,
That in S. there are Three Vills, (*viz.*) A. B. C.
and becauſe the Plaintiff does not ſhew in
which of the Vills the Land lies, demands
Judgment.

And the Plea was adjudged ill, becauſe after
Imparlance; and he does not ſhew in which
of the Vills the Land lies. *Relv.* 112.

And in ſuch
Caſe the o-
ther ſhall be
abated.

And where the Defendant pleads Matter,
which gives the Plaintiff or Demandant a bet-
ter Writ, it ſhall abate the other, as in a Writ
of *Ayel*, Seisin of the Father; ſo in *Mortdan-
ceſter*, his own Seisin, &c.

But

But in *Formedon* or Writ of Right, *darrein In Formedon*.
Seisin is no Plea; for in *Formedon* the Gift, and
 not the *Seisin*, is the Title, and it is not with-
 in the Statute of 33 H. 8. of *Limitations*, to be
 brought within Fifty Years, 12 Eliz. Dyer 290.
 4 Ed. 4. 32. b.

Note, The Rector of D. shall not be allowed By a Rector.
 to say, He was commorant at B. because he
 shall be intended to be always resident upon
 his Benefice. 11 Co. 7. b. 10 H. 6. 8.

One sued as Executor, after Imparlance shall
 not say, that he is Administrator and not Exe-
 cutor. 36 H. 6. 17, 32 H. 32. 9 Ed. 4. 42.

See *Raft.* 108, 126, 160, 298, 300, &c.

9thly. By Abatement for Non-tenure, &c.

ff. **E**t p̄dict' Thomas p̄ P. C. Attorn' For that the
 suum venit & defendi jus suum Defendant
 quando &c. Et dicit qđ ip̄e non possit was not Te-
 Manerium p̄dict' cum p̄tin' ut dotem nant of Free-
 ipius Alicie reddere quia dicit qđ ip̄e hold at the
 non est inde tenens ut de libero tene- Time of the
 mento nec fuit die impetraconis hris p̄d' Writ.
 Alicie seu unquam postea Et hoc parat'
 est verificare Unde petit iudicium de
 h̄d p̄d', &c.

Et p̄d' Alicia dicit qđ h̄d suum p̄d' Replication
 racone preallegat' cassari non debet and Issue.
 Quia
 dicit qđ die impetraconis hris sui p̄dict'
 scilicet vicesimo secundo die Martii Anno
 Regni Dñi Regis nunc septimo p̄dictus
 Thomas fuit tenens ut de libero tene-
 mento de Manerio p̄dicto cum p̄tin'
 put p̄ h̄d suum p̄d' supponitur Et hoc

Venire Fac.

per' qđ inquiratur p pziand Et pđ Tho-
mas filiter Ideo pcept' est Vie quod Ve-
nire fac hic in Oxab' Sec Trin' rit, &c.
p quos (&c.) Et qui nec (&c.) ad recogni
(&c.) Quia tam (&c.)

Vide Clerk's Assist. 8. Bro. Vad. Mec. 459.

Dower against Two, both plead Quod
tenet in separalit' de parte Et ad resid'
separat' plii' non tenure & Demurr' inde.
Rob. Ent. 267.

In a *Præcipe quod reddat* against Two if one
plead Non-tenure, and the other accept the
entire Tenancy upon him, the Writ shall a-
bate only against him that pleads Non-tenure,
and shall stand against the other. 22 *Edw.* 4.
4. *a. Rast. Entr.* 365.

At the *Grand*
Cap. re-
turn'd, Two
plead Non-
tenure to the
Writ, the
Third takes
the entire
Tenancy up-
on him, and
gages Law.

ff. **E**t modo hic ad hunc diem ben' tam
pđ A. p C. W. Att' suum qm p-
dix' B. C. & D. p W. C. Attorn suum
Et Vie modo mand' (&c.) Et pđ B. &
D. dicunt qđ ipđ pđ 40 acē terre cum
ptin' pfac A. redd' non possunt quia
die qđ ipđ non sunt inde tenend ut de li-
bero tēto nec fuer' die impetrac brevis
Ozi pđ A. nec unquam postea Et hoc
(&c.) Unde petit Iudic de bz d ill (&c.)
Et pđ C. die qđ ipđ est solus tenens
tētoz pđ cum ptin' & fuit die impetra-
con b'is pđ' & semper postea Abloz hoc
qđ pđ' B. & D. eod die impetrac bzis
pđ seu unqm postea aliquid fuer' in eis-
dem Et hoc (&c.) Et die qđ defalt pđ'
sibi in hac parte nocere non debet quia
die qđ ipđ nunqm sum, &c. In Dower,

Vide 1 Bro. 202, 205. Rob. Ent. 246, 267. In Formedon, 2 Bro. 164.

See 1 Lut. 37, &c. in Formedon in Discender, &c. the Defendant pleads Non-tenure to Part; and to the other Part, that the Demandant had entred, &c. Repl. as to the First, That he was Tenant, &c. and Demurrer to the Residue and Judgment for the Demandant, because that the last Plea was repugnant, and also for that no Time of the Demandant's Entry is alleged. In Formedon Non-tenure p̄stat in Abatement post Imparl' Plaintiff Reply, Quod Tenens ante impetrac̄ Oriḡ Enfeoffavit divers̄ p̄son' incognit' p̄ fraudem Et quod noticiē non heret de nōib' p̄sonarum vers̄ quas h̄d suū de Formedon in Discender impete.

Quod Tenens continue Erit' & p̄ficia recepit p̄ quod p̄ Statut' existēd p̄vnoz des p̄f̄ts Tenens adjudicari debet. The Tenant demurs 3 Lev. Rep. 52.

In h̄d de Record, 1 Bro. 313, 314. M̄sa, non tenure p̄stat' Et si, &c. p̄stat' ne unques seisse Et si, &c. nūl tort. Rob. Ent. 128. In M̄sa Disclaimer by one, the others pleaded, Quod tenent conjunctim cum R. & H, per Cartam J. p̄stat' in Cur' Repl' quod Des. sunt soli Tenentes Et traverse qđ alii aliquid herent & Seir' Fac' ad manutenend' conjunctim tenentiam. Plit. Gen. 120. Vide Rob. Entr. 134;

See *Raft.* 66, 111, 142, 233, 275. 276, 281, 282, 363, 364, 440. *Aft.* 10. 258.

Not after Impar-
lance to
to be plead-
ed.

It is said, That in a Plea of Land, after a general Imparlance, one shall not have the View: So he shall not plead Non-tenure or Jointenancy, 4 *Elix. Dyer* 210. *b.* But see 26 *H.* 8. 2. But in a *Præcipe* against Two, if one imparl, the other may demand the View. 22 *Ed.* 4. 24.

Summons
and Seve-
rance, and
Death abates.

If there be Two Jointenants, and the one is summoned and severed, and dies, the Writ shall abate; but in a *Scire Facias* it shall not. 10 *Co. Read* and *Redman*.

Where Death
shall not
abate after
Summons and
Severance.

In all Actions, Personal and Mix'd, where the entire Thing is to be recovered, as in *Quare Impedit*, Detinue of Writings; &c. there (after Summons and Severance) the Death of one shall not abate the Writ. *Ibid.*

Neither af-
ter Judg-
ment in Per-
sonal Actions.

So the Death of one after Judgment in Personal Actions shall not abate the Writ, althoth there be no Severance. *Ibid.*

Nor where
the Writ
goes in Dis-
charge.

Also where the Writ goes in Discharge, as an *Audita Querela*, and the One is summoned and severed, and dies, the Writ shall not abate. *Ibid.*

It is no Plea to the Writ to say, That the Summons were of other Lands; for the Defendant may wage his Law *de non Sum.* 37 *H.* 6. 26.

Where the
Defendant
ought to an-
swer over.

If the Defendant pleads Non-tenure to Parcel, he ought to answer to the Residue: Or if one Defendant plead Non-tenure, the other Tenant or Defendant ought to answer, and the

the Writ shall abate only for that Part to which Non-tenure is pleaded. *Stat. 25 Ed. 3. 5, 13, 16.*

But if the Demand be of a Manor which is entire, Non-tenure of Parcel shall abate the whole Writ. *1 Com. 205. a.*

But for the Pleading of it in several Actions, and when the Receipt of the Profits shall make a Tertenant. *Vide 22 Ed. 4. 4. 4 Ed. 4. 4. Stat. 7 H. 7. 5. Rast. Entr. 66, 111, 230, 232, 275, 281, 363, 440, 589. Co. Entr. 219, 312, 324, 325.*

E T pñ M. p C. f. Attornd suum ven
Et dic qđ ipse pñ M. pfat' H. dotem
suam de eisdem tenentis cum pñtin' red-
dere non potest quia dic qđ ipd non est
inde tenens ut de libero tenēto nec fuit
die impetracon hñs Original ipsius H.
nec unquam postea Et hoc parat' est
verificare Unde pet' Judicium de brevi
ill, (Ec.)

*Aliter in
Dower.*

Et pñd' H. dic qđ p aliqua in eodem
plito pallegat' brebe suum pñd' cassari
non debet quia dic quod die impetracon
brevis Original ipsius H. scit 27 die
April' Anno regni Domini Regis nunc
octavo pñ M. in jure suo pñr' fuit tenens
tenētozum pñ cum pñtin' ut de libo tenēto
put p idem brebe supponitur Et hoc pet'
qđ inquiratur p pñiam (Ec.)

*Repl.
Quod est ten-
nens.*

Note, That in Dower upon a Plea of several Tenancy the Writ was abated. 1 Lut. 11. Vide 1 Bro. 267. Defendant pleads that he is Tenant in Severalty.

The Defen-
dant pleads
That the Te-
nements de-
scended to
his Father,
who is yet
living, &c.

Et p^r A. S. p^r C. D. Armig^r & C. f.
gen^r qui p^r Cur' Dⁿi Regis hic admiss.
sunt ad Def. p^r eodem R. infra etat' exi-
stend^r ut Guardiani ipsius R. vend^r & dic^r
q^d ip^se p^rfat' Anno dotem suam de ten-
tis p^r cum p^rtin^r reddere non potest quia
dic^r q^d p^r C. S. quondam Vir p^r Anne
& Abus p^r R. modo Def. post dispensal'
int' ipm^r C. S. Abum & p^rfat' Annam
celebrat' fuit seisc^r de ten^ris p^r cum p^rtin^r
in Dⁿico suo ut de feodo Et sic inde sei-
sc^r existen^r idem C. S. Abus postea &
ante diem impetrac^r b^rebis Original^r p^r
A. apud L. in Com' p^red' obiit de tali
Statu suo inde seisc^r post cujus mortem
ten^rta p^r cum p^rtin^r descendebant cuidam
R. S. Patri ipsius R. S. modo Def. ut
fil^r & hered^r p^r C. S. Abi p^r q^d idem R. S.
pater die impetrac^r b^rebis Original^r p^red'
A. fuit & adhuc est seisc^r de ten^ris p^red'
cum p^rtin^r in Dⁿico suo ut de feodo Et
sic idem R. S. filius dic^r q^d ip^se non est
inde tenens ut de libo ten^rto nec fuit die
impetrac^ron' b^ris Original^r p^r A. Et
hoc parat' est verificare Unde pet^r Judic^r
A p^r A. Dotem suam de ten^ris p^r cum
p^rtin^r hoc Casu de eodem R. S. filio ha-
bere debeat, &c.

Quer' Repl^r q^d Def. est tenens ten^rtoz
ut de libo ten^rto. &c. Et exit' inde.

For that the
Plaintiff was
Tenant in
Common at
the Time of
the Trespass.

Et p^r Def. dic^r quod p^redict' Quer'
p^r tempore quo supponitur C^rasg^r
p^rdict' fieri nichil fuit in p^rdicto Messua-
gio (&c.) de nobis assign^r nisi in communi
cum p^rfat' J. G. qui modo superstes & in
plena

plena vita exisset videlicet apud P. p̄dix
Et hoc (Ec.) Unde ex quo p̄dix J. G.
non nominatur in br̄d p̄dicto idem Def.
petit Iudicium de h̄d illo. Ec.

Cassari non quia die q̄ ipsa est & Repl.
tempore Cūsgē p̄d facie fuit sola seist de He was sole
p̄dix Messuagio (Ec.) de novo M̄sgm Tenant.
cum p̄m in Cūica suo ut feodo Absq̄
hoc p̄dix J. G. tunc aliquid fuit in
eodem Messuagio (Ec.) cum p̄m de
novo M̄sgm Et hoc p̄t q̄ inquiratur
per Patriam (Ec.)

Vide Hansf. 103. Thompsf. 12.

In an Affize it is a good Plea to the Writ
to say, That the Plaintiff was seised of the
Freehold of the Lands in the Plaint; but in
a forcible Entry it is no Plea to say, He was
seised the Day that the Writ was purchased.
5 H. 7. 41.

If *Non-tenure* be pleaded the Day of the
Writ purchased. it is not sufficient, for he must
say, *nec unqm̄ postea*. 37 H. 6. 16. Vide
10 H. 6. 22. 3 H. 7. a. But in Jointenancy
he needs not say, *nec unquam postea*. Bro.
Abr. fol. 99.

If one plead *Non-tenure* of Part, he ought
to shew who is Tenant of the Residue. Other-
wise, Where he pleads *Non-tenure* of the whole,
unless it be for a Rent, and the Land is not
the Thing in Demand. Where the
Defendant
ought to
shew who is
Tenant to
the Residue.

In Debt upon a Lease, *Non-tenure* is a good
Plea, without more saying. 4 H. 6. 5. In Debt upon
a Lease.

After a *Prece partium*, the Defendant shall
not plead *Non-tenure*, 9 Ed. 4. 31. 20 H. 7. 14. After *Prece
partium*.
Vide 21 Ed. 4. 51.

In

Where such
Plea is pe-
remptory to
the Tenant.

In a *Precipe quod reddat*, if the Tenant plead *Non-tenure* or Jointenancy, or other dilatory Matter, it is peremptory to him, and he shall lose the Land. 5 E. 4. 74.

So if a Plea after the last Continuance be found against the Tenant, it is peremptory and not dilatory ; but Pleas dilatory generally are not peremptory. 5 Ed. 4. 139. 21 Ed. 4. 25. a.

Where the
Tenant
ought to shew
of what
Feoffment.

At Common Law, he that pleads Jointenancy ought to shew of what Feoffment. 28 & 29 H. 8. Dyer 32. a. and by 19 H. 6. 32. If one plead Jointenancy on his Part, he ought to shew of what Feoffment: But it is otherwise if he plead Jointenancy on the Part of the Demandant.

If Tenancy in Common be alledged on the Part of the Plaintiff by the Defendant, he need not shew how. *Vide Fitzh. Abr. fol. 248.* But it is otherwise of Jointenancy, or *p in-
diviso ex parte Defendantis*. 22 H. 6. 12. *Vide* 15 H. 7. 9.

If the Defendant in Trespass plead, that the Plaintiff holds in Common, he ought to shew how ; for it may be by several Means, as by Alienation of Copartners or Jointenants, and therefore ought to be certainly expressed in Pleading.

Upon a *Scire Facias* against Tertenants, they plead in Abatement that one of them was not summoned, whereupon a *Scire Facias* was awarded against him ; upon *Scire Facias* returned, a *Respond ouster* was awarded. 2 Saund. 8. *vide* 2 Ventr. 103. *Qd. est at Tenens non Sum.* *Vide ante.*

Join-

Jointenure pleaded.

N. **E**t pzed' Def. p (Ec.) Attozn' suum
venit & Defend' vim & injur' quan-
do, &c. Et quoad venire Vi & Armis
(Ec.) non cul' (Ec.) Et quoad resid'
transgr' pd' superius fieri suppoit' idem
Def. pet' Judicium de billa illa quia
dic' quod clausum & domus pzedia' nec-
non loci in quibus supponitur tnsgr' pze-
dic' superius fieri sunt & pzedia' tempore
quo, &c. fuer' tria Messuagia & sexa-
gint' acr' terr' cum ptin' in p. pzedia'
quodq; pzed' Quer' pzedicto tempore quo
supponitur transgr' pzed' superius fieri
nichil huic in eisdem testis nisi insimul
& p indiviso cum quodam J. W. qui
adhuc superstes & in plena vita existit
videt' apud p. pzedia' Et hoc (Ec.) Un-
de ex quo pzedia' J. in billa pzedia' non
nominatur Idem Def. pet' Judicium de
billa illa & quod billa illa cassetur, &c.

For that the
Plaintiff at
the Time of
the Trespass
was Jointe-
nant with
another not
named.

Note. If the Jointenancy be pleaded by the
Def. ex parte Quer' 'tis not necessary to
shew how; but when 'tis pleaded ex parte
Def. he ought to shew how particularly.
2 Cro. 590.

And so of Tenant in Common. See *Rast.*
353.

Et pzed' Quer' dicit qd' billa sua pzed'
racone pzallegat' cassari non debet
quia dicit quod ctm & domus pzed' nec-
non loci in quibus tnsgr' unde se modo
queritur

Repl.
And New
Assignment.

queritur fact' fuit sunt & dco tempore quo, &c. fuer' tria Messuagia & centum & quadragint' acr' terre in P. Com p'd vocat' (&c.) al' qm p'd tria Messuagia & sexagint' acr' terre in Narratione p'd Def. superius spec' Et hoc (&c.) Unde ex quo p'd Def. ad tñlgr' in eisdem Mess. & centum & quadragint' acr' terre superius de novo Assign' fact' nō respond' Idem Quer' petit Iudic. & dampna sua occōne tñlgr' ill' sibi adjudicari, &c.

Vide simile Clift 23. ff. Quod quer' nichil fuit in Messuag' de novo assign' nisi in Com cum P. Nepl' quod Quer' est solus scit' Et traverse quod P. aliquid het. i Bro. 8. simile Hansf. 103.

See for Precedents, *Rast.* 62, 66, 80 187. 139, &c. *Co. Ent.* 41, 317. *Thomps.* fol. 2. numb. 11. i *Brown.* fol. 8. numb. 36, &c.

Note, That in *Formedon* against divers; some plead *Non-tenure*, and others take the Tenancy upon them entirely, the Tenancy shall not abate, and those that plead *Non-tenure* shall not have Judgment. 22 *Ed.* 4. 4. 4 *Ed.* 4. 33. *a. Stat.* 25 *Ed.* 3. 12.

Non-tenure
or Jointenan-
cy after Im-
parlance.

Note, It has been held, That after *Imparlance* one may plead *Non-tenure* or Jointenancy. 9 *Ed.* 4. 36. 20 *H.* 7. 14. but it seems to have been intended a Special *Imparlance*. For 4 *Eliz.* *Dyer* 210. after a General *Imparlance* one may not plead *Non-tenure* or Jointenancy.

Where one
Tertenant
cannot plead
in Abate-
ment.

If a Conusee in a Statute sue Execution against one Tertenant alone without the other he cannot plead in Abatement, but is put to his

his *Audita Querela* against the other: For that the Conufee is not bound to take Notice of all the Tertenants. 16 *Eliz. Dyer* 331. 332.

In Trespass against Two, one pleads, That the *Locus in quo*, &c. is within the Fee, and demands Judgment of the Writ *Quare Di & armis*, the Writ shall abate against him only. So where one is Feme-Covert, Jointenancy in the Demandant or Coparcener shall be pleaded in Abatement. 22 *Ed. 4. 4. 2 H. 7. 16 Cro. Eliz. 554. Rast. Ent. 615.*

One pleads the *Locus in quo*, within his Fee.

In a *Præcipe* after Jointenancy pleaded with a Stranger, the Defendant in another Writ shall not plead *Non-tenure*; because by the former Plea he had affirmed himself Tenant: But if the first Writ had been brought against the Husband alone, and the Second against the Husband and Wife, the Wife may plead *Non-tenure*, because she was a Stranger to the former Action. 33 *H. 6. 2, 3.*

Where Non-tenure shall not be pleaded after Jointenancy.

So in a *Præcipe* against Two, one pleaded Jointenancy; he that pleaded Jointenancy and abated the first Writ, shall not to the second Writ against both plead the same Jointenancy alone; but he and his Companion may plead the same Jointenancy, because his Companion is a Stranger to it. 19 *Hen. 6. 32.*

Where one may not plead Jointenancy upon the second Writ.

Jointenure and Non-tenure.

D E f. venit (&c.) Et quoad tria Messuagia, (&c.) parcell p̄dicit' Mess' idem def. dicit qđ ipse tenet & die impetraconis h̄ebis originalis p̄dicit' quer' tenuit eadem tria Messuagia & sex libe reddit' cum p̄m̄ conjunctim cum C. H̄r'

For that the Defendant is Jointenant of Part.

See for Pre-
cedents, *Rast.*
279, 362, 386.
Aston 10. 35.

And *Non-te-*
nure of the
Residue.

Ar' ejus adhuc superssiste & in plena vita
existen' ex *Dona* & *feoffamento* *C. B.*
(*Ec.*) eisdem *Def.* & *E.* per nomina
(*Ec.*) & heredibus de corporibus eorum
dem *Def.* & *E.* creun' p noia omnium
terrai' (*Ec.*) cum ptiā in *L. factis* Unde
ex quo eadem *E.* non nominatur in *bze-*
vi p'dia' pet' *Judicium* de *bzevi* illo, *Ec.*
Et p'fert hic in *Cur'* alteram partem cu-
jusdam *Scripti* indentat' sub noibus
p'edia' *C. B.* (*Ec.*) fac' que conjunctam
tenentiam *p'ed'* in forma *p'edia'* testatur
cujus dat' est apud *P.* (tali die) Et
quoad resid' tentorū p'd' unde *p'ed'* *Quer'*
clamat tertiam partem ut dotem ipsius
quer' idem *Defend'* dicit qđ ipse tertiam
partem eorundem tenitorum resid' *p'edia'*
quer' reddere non potest Quia dicit qđ
ipse non est tenens resid' illius ut de
liba tenito neque p'ceptoꝝ *p'dia'* reddi-
tus neque tenens tentorū unde supponi-
tur redditum illud pervenire nec fuit
die impetracōis *bzevis* *p'edia'* Et hoc,
Ec. unde quoad tertiam partem eorum-
dē redcorum resid' pet' *judicium* de *bzevi*
p'edia', *Ec.* Vide 2 *Mod. Intrad.* 16.

Sole-Tenure pleaded.

For that the
Defendant is
and was sole
Tenant.

Et *p'ed'* *A. & B.* dic' qđ p'd' *C.* tenitū
ten' p'd' habere non debet quia *p'ed'*
A. dic' qđ ipse est tenens tent' *p'ed'* cum
p'rtiā illius ipsum *C.* *p'ed'* *B.* petit ut
de *liba* tenito & fuit die impetrac' *bzevis*
Original *p'ed'* *C.* & semper postea Absq̃
hoc quod *p'ed'* *B.* tunc vel postea ali-
quid

quid fuit in eisdem Et hoc (Ec.) unde
pet' Judic' de brevi illo, Ec. Et ulterius
dic' qd' ipse nunquam sum fuit sedm' Le-
gem terre (Ec.) Et pet' se ad Legem
suam de integro ten' p'edia' faciend' ad-
mitti, Ec. Et p'edia' B. dic' quod ipse
est integre tenens tenementorum p'edia'
Ec. ut supra.

*Et nunquam
fuit Summ.
&c.*

N. **E**t p'ed' C. qd' ipse a seifina habend'
de ten' p'dia' cum p'tin' per allega-
con' p'dia' repelli non debet quia dic' qd'
die impetraconis brevis Original' sui
scilicet (Ec.) p'ed' M. & B. fuer' tenen'
tenentorum p'edia' cum p'tin' ut de libera
ten'ta in Cōi p'out per breve suum p'd'
supponitur Et hoc pet' quod inquiratur
per p'iam Et p'edia' M. & B. similiter
Ideo, Ec.

*Repl.
That he was
Tenant in
Common.*

*Vide 2 Bro. 42. See Rast. 221, 272, 273,
282, 364, 365, 419, &c.*

10thly. By Abatement for Things done af-
ter the Original purchased.

N. **D**icit quod p'edia' quer' doct' diem
impetrationis brevis Original'
p'ed' scilicet (tali die & anno) apud N.
in Com' L. per quoddam scriptum suum
acquiescent quod idem Def. sigillo p'dia'
quer' signat' hic in Cur' p'ofert cujus dat'
est eisdem die & anno per nomen (Ec.)
cogn' se recepiss' & huic die confecton'
ejusdem scripti de ipso Def. p' nom' (Ec.)
viginti librar' in partem solutionis cu-
jusdm' Obligaconis majoris summe in
qua

*For that the
Plaintiff dis-
charged Part
of the Debt
after the Ori-
ginal pur-
chased.*

qua idem Def. eidem quer' tenebatur de quibus quidem 20 l. idem quer' fatebatur se fore solut' ac ipsum Def. & Exentat' suos inde fuisse quiet' per idem scriptum Et idem Def. dic' qd' p'dict' 20 l. in p'ced' script' acquietanc' spec' sunt parcell' p'dict' Centū lib' in p'dict' Parr' ipsius quer' contentat' Et hoc (Ec.) Unde pet' de iudic' b'rebi illo, Ec,

Repl.
That the Ac-
quittance
was for an-
other Debt.

Traverse.

Cassari non debet quia dic' qd' p'ced' p'dict' Def. ante tempus consecconis scripti p'dict' p' quoddam alium scriptum suum obligatoriu' gerens dat' (tali die & anno) Obligat' fuit eidem quer' in al' Cent' lib' solvend' eidem quer' super vicessimū quartum diem Junii tunc p'ced' sequen' de quibus quidam aliis Cent' lib' idem quer' recepit de p'fat' Def. 20 l. & inde fecit p'dict' scriptu' acquietanc' absq' hoc qd' idem quer' fec' p'dict' Script' acquietanc' p'fat. Def. in partem soluconis dic' denar' in p'dict' script' obl' in Parr' p'ced' spec' prout p'dict' Def. superius allegavit Et hoc (Ec.) unde pet' Iudic' & debm suu' p'dict' unacum dampnis (Ec.) sibi adjudicari.

Issue upon
the Traverse.

Et p'dict' Def. dic' qd' p'dict' Quer' fec' p'ced' Script' acquietanc' eidem Def. in part' soluconis p'dict' denar' in dicta script' obligat' in dicta Parr' p'ced' superius spec' put ipse superius allegavit Et de hoc pon', Ec.

fi. Et

N. **E**t p̄d̄ Def. p̄ W. T. Attoꝝ suum
 ven̄ & Defend' vim & injur' &c.
 Et petit Judiciu de Villa p̄d̄ia quia
 dicit qđ p̄d̄. G. H. post ultimam con-
 tinuacōn' Ville p̄d̄ia videl' post diem
 Martis p̄or' post Quindē Sed Mar-
 tini ult' p̄terit' de quo die loquela p̄d'
 continuatur hic usq; ad hunc diem scilicet
 (Et.) sup̄rad̄ia per quandam billam
 suam acquietanc quam idem Def. sigil-
 lo ipsius G. sigillat' hic in Cur' p̄ofert
 cujus dat' est eisdem die & anno sup̄ra-
 diais cogn' se recepisse de eodem Def.
 quinquagint' libras in parte solucōnis
 majoris summe debet' eidem G. per
 Scriptum suum obligatoꝝium p̄d̄ia
 Et ulterius idem Def. dicit quod Scrip-
 tum obligatoꝝiū p̄d̄ hic in Cur' p̄o-
 lat' & p̄d̄ia Scriptum obligatoꝝium in
 p̄d̄ Villa acquietanc spec' sunt unū
 & idem Scriptum & non aliud neque di-
 versū & quod billa acquietanc facta fuit
 in exoneratione quinquaginta librarum
 parcel' p̄d̄ Centum librarū in Narra-
 cōne p̄d̄ia superius spec' Et hoc parat'
 est verificare unde petit judiciū de villa
 p̄d̄, &c.

Vide Pl. Gen. r.

Aliter,
 For that the
 Plaintiff
 gave Acquit-
 tance for
 Part of the
 Debt after
 the last Con-
 tinuance.

N. **E**t petit Judiciū de Narracōne p̄d̄
 quia dic' qđ p̄ eandem Narracō-
 nem ebidem' apparet quod Quer' narrat
 versus ipsū Def. de transgr' & Ejec-
 cōne p̄d̄ia virtute cujusdam dimissio-
 nis sibi facta per p̄fat' Tessor' viceima

For that it
 appears the
 Demise was
 made after
 the Bill ex-
 hibited.

H

nong

nono die Novembris Anna (Ec.) supraz
 dico que quidem dimissa facta fuit post
 diem exhibitionis bille pzed' ex quo mani-
 feste apparet qđ pzedict' Quer' tempore
 Narracionis fact' nullam Causam Nacio-
 nis verius ipsum Def. habuit seu here
 potuit de transgr' & Ejection' pđ supius
 fieri supposit' Et hoc, (Ec.) unde pet'
 Judicium de Narracione pzed' Et qđ Nar-
 raco illa cassetur, Ec. Vide Thompsl. 2.

That the Plaintiff released to the Defendant
 post impetracon hris. Pl. Gen. 5, 6. For that
 the Plaintiff receiv'd Part of the Debt after
 the Original prosecuted: Repl. That he sold
 the Defendant Goods for such a Sum de qua
 recepit parcelle, and traverses quod recepit
 partem Debi petit'. Vide Rob. Ent. 3. Cl.
 Assist. 10. Reg. Pl. 293.

That the Plaintiff post impetracon hris
 suscepit Ordinem Militis Balnei & De-
 murr inde Vidian 93.

See for Precedents Rast. 30, 106, 107, 160,
 334, 365. Ast. 7. Thomps. fol. 2. numb. 12.
 Brown. 1st part fol. 2. numb. 10. fol. 8. numb.
 34, &c.

Upon Bond,
 Parcel re-
 ceived after
 the Writ
 purchased.

Note, That in Debt upon Bond, if the De-
 fendant plead that after the Writ purchased,
 the Plaintiff had received Parcel, and shews
 an Acquittance, the Writ shall abate the
 Whole; and notwithstanding it is a good
 Plea in Bar for that Part.

Part paid
 upon a sim-
 ple Contract.

But it is made a Quere if in Debt upon
 simple Contract, the Plaintiff receives Part,
 pendente brevi, the Writ shall abate 5 Hen.
 7. 81. a. 7 Ed. 4. 19. 15 Hen. 7. 10. 3 Hen. 7.
 3. Rast. Ent. 160.

But

But in Debt upon Bond with Condition to deliver Twenty Quarters of Barley, the Defendant pleaded in Abatement, that *pendente Billa* the Plaintiff had accepted Fifteen, Parcel of the Twenty, and it was adjudged to be an ill Plea, because it is collateral, and not Parcel of the Sum contained in the Bond.

3 Co. 253.

See after at the latter End, what Things may be plerded after the last Continuance, and how.

11thly. Abatement, for that another Action is depending.

Quoad part' Def. plead non debet p patriam Et quoad 16 l. resisd quas pced' A. B. qui tam, &c. versus ipsum J. S. pro ejus exercitacione & usu artis mysteriori sive manualis occupacione Barbitonsoris predicta per octo menses postiores pced' duodecim mensium in Billa pced' A. B. pced' mentonat' idem J. S. pet' Judic' de Billa ill' quia die gd (tali die, &c. anno, &c.) ven' hic in Cur' quidam W. S. qui tam p Dño Rege qm p seipso in ea parte sequitur per H. H. Attoznd suu ac tam pro dicto Dño Rege qm p seipso in ea parte sequitur p H. H. Attoznd suu ac tam p dicto Dom' Rege qm p seipso exhibuit in eadem Cur' hic quandam billam suam versus pstat' J. S. in custod' Marr', &c. de placito debiti & inveni pleg' de ppos' scilicet J. D. & R. R. per quam quidem billam predicta W. S. qui tam, &c. querebatur de eo-

Quoad part' Non debet quoad 16 l. Defendant pleads a former Bill by another yet depending.

dem J. S. in custod' Marr' Marese Dñi Regis coram ipso Rege ut p̄fertur existen' de placito quod redderet dicto Dño Regi nunc & p̄fat' W. S. qui tam, &c. 16 l. leglis monete Angl' quas die Dño Regi nunc & p̄fat' W. S. qui tam, &c. debuit & injuste detinuit p̄ eo videlt qđ cum per quendam Actum in Parliament' Dñe Eliz' nup̄ Regine Anglie tent' apud Westm' in Com' Middx' 12 die Jan' Anno Regni dict' nuper Regine quinto edit' & p̄vis inactitat fuisset Auctoritate ejusdem Parl' Qđ post primū diem Marti (&c.) (reciting the Bill or Information) Ad dampnum ipsius W. S. qui tam, &c. 10 l. Et inde produxit secā, (&c.) prout per Bill' p̄dictā in eadem Cur' hic de Record' assilat' residend' plen' liquet & apparet Et p̄dictā J. S. ultius dic' qđ ip̄e idem J. modo Def. & p̄dictā J. S. in Villa p̄fat' W. S. p̄dict' noiat' sunt un' & eadem personā & non al' neq; diversa, qđq; p̄dict' Villa p̄fat' W. S. qui tam, &c. ac p̄dict' Villa p̄fat' A. B. modo quer' qui tam, &c. in dea Cur' hic exhibit' sunt vsus eundem J. S. modo Def. pro uno eodemq; offens' quoad ejus exercitacion manual' occupacion p̄dictā p̄dictā spatium octo mensium posteriorū p̄d' 12 mensium in Villa p̄d' A. B. p̄dict' mentionat' resid' Et non pro aliis neq; diversis quodq; p̄dict' prima Villa p̄ p̄fat' W. S. ut p̄fertur hic in Cur' exhibit' pendet minime discontinuat' Et hoc idem J. S. parat' est verificare unde pet' iudiciū de Villa p̄fat' A. B. Et quod Villa illa cassetur, &c.

Abatement.

Et

Et p[re]d' A. B. qui tam, &c. dic' quod Billa ipsius A. qui tam' &c. p[er] aliqua per p[re]fat' J. S. p[re]allegat' cassari m[er]ito debet quia p[re]stando q[uo]d non h[ab]etur aliqua tal' billa p[re]fat' W. S. qui tam, &c. in Cur' hic vers[us] p[re]fat' J. S. exhibit' p[ro]ut p[re]d' J. superius placitando allegabit p[er] placito idem A. B. qui tam, &c. dic' q[uo]d billa p[er] p[re]fat' W. S. vers[us] eundem J. exhibit', exhibit' fuit in Cur' hic p[er] p[re]fat' W. S. v[er]sus p[er] J. S. p[er] fraudem & Covinam int[er] ipsos p[re]fat' W. S. & J. S. apud Westm' hic prius hit' ad ipsum A. B. qui tam &c. ab actione sua p[er] p[er] 16 l. h[ab]end' p[re]cludend' Et hoc. (&c.) unde pet' Judic' & p[er] 16 l. parcel' debi p[er] lupius pet' dicto D[omi]no Regi nunc & eis A. B. qui tam, &c. adjudicari, &c.

Repl.
That the former Bill was exhibited by Fraud and Covin, &c.

Et p[re]d' J. S. dic' q[uo]d billa p[re]dicta' per p[re]fat' W. vers[us] ip[su]m J. exhibit' exhibit' fuit in Cur' hic per p[re]fat' W. S. vers[us] ip[su]m J. iuste & vere ea intencione ad recuperand' 16 l. de p[re]fat' J. Abiq[ue] hoc q[uo]d billa p[re]dicta' p[er] p[re]fat' W. S. vers[us] ip[su]m J. exhibit' exhibit' fuit in Cur' hic p[er] p[re]fat' W. S. vers[us] ip[su]m J. p[er] fraudem & covinam int[er] p[re]d' W. S. & ip[su]m J. prius hit' ad p[re]d' A. B. qui tam, &c. ab actione sua p[re]d' p[er] p[re]d' 16 l. h[ab]end' p[re]cludend' modo & forma put p[re]dicta' A. qui tam, &c. superius inde replicando allegabit Et hoc, (&c.) unde ut prius pet' Judicium de billa p[re]dicta' A. B. qui tam, &c. Et q[uo]d billa illa cassetur, &c.

Rejoinder.
And that the former Bill was exhibited *vere & iuste*, and traverseth the Fraud and Covin.

Surrejoin-
der and Issue
upon the
Fraud and
Covin.

Et p[re]d' M. qui tam, &c. ut p[ri]us die
quod billa p[ro]d' p[er] p[re]fat' W. S. versus
eundem J. exhibit' exhibit' fuit in Cur'
hic p[er] p[re]fat' W. S. versus p[re]dia' J. S.
per fraudem & covinam int' ipsos p[re]fat'
W. S. & J. S. apud W. hic p[ri]us
hit' ad ip[su]m M. B. qui tam, &c. ab
actione sua p[re]d' p[er] p[re]o' 16 l. h[ab]end' p[re]-
cludend' modo & forma p[ro]ut p[re]d' M.
qui tam, &c. superius replicando alle-
gabit, & hoc idem M. qui tam, &c.
pet' q[uo]d' inquiratur p[er] patriam, Et p[re]-
dia' J. sitit' Ideo, (&c.)

See Vidian 187.

For that
there is ano-
ther Writ
pending for
the same
Debt.

Et p[ro]d' A. p[er] J. B. Atroz' suum be-
nit & petit Judicium de b[re]vi p[re]-
dicto quia dicit q[uo]d p[ro]dia' C. ante diem
impetraconis b[re]vis Originalis illius
scilicet (tali die & anno) p[re]cut' fuit
extra Curiam Cancellarie dicti D[omi]ni Re-
gis (eadem Cancellaria apud Westm[onasterium] in
Com[itatu] Middel' tunc existen') quoddam
b[re]ve dicti D[omi]ni Regis de p[re]dicto debito
ducent' & quadraginta librarum ver-
sus ipsum A. p[er] nomen A. R. nuper
de H. Armis' alias dia' A. R. de P.
in Com' E. Gen' tunc Die London' di-
rectum per quod quidem b[re]ve die Do-
minus Rex nunc eidem tunc Die' Lon-
don' p[re]ceperat q[uo]d eidem tunc Die' p[re]-
ciperent eidem A. q[uo]d iuste & sine dilone
redderet p[re]fat' C. ducent' & quadrag'
lib[ras] quas et tunc debuit & iniuste de-
tinuit ut tunc dixisset, Et nisi fecisset

Et predicta C. fecisset eodē die secur' de-
clam' suo psequend' tunc sum per bonos
sum predicta' N. qd' esset coram Justic'
dicti Dñi Regis hic scilicet apud Westm'
a die Scd Michis in tres Septimanas
tunc p'or' sequend' ostens' quare non fe-
cisset, Et quod iidem tunc die' haberent
tunc hic sum' E h'rebe illud, Et idem
N. ulterius dicit qd' p'ed' ducent' E
quadragint' lib're per p'dictum C. versus
p'fat' N. modo petit' sunt unum E idem
debitum E non diversa, Qd'q' p'dicta' p'ri-
mum h'rebe in eadem Curia hic adhuc
pendet minime discontinuat unde petit
Judicium de isto posteriori h'rebi impe-
trato pendente predicto p'iori h'rebi,
Ec.

Vide Clerk's Assist. 5.

ff. **D**efend' pet' Judicium de h'rebi p'ed'
quia dicit quod ante diem impe-
trationis h'rebis Originalis predicta' sci-
licet (tali die E anno) p'd' quer' p'secutus
fuit extra Cur' Cancell' dicti Dom' Re-
gis apud Westm' in Com' Midd'x' tunc
existen' quoddam al' h'rebe dicti Dñi Re-
gis de debito 30 l. versus ipsum Def.
Retorn' coram Justic' hic (tali die)
Ad quem diem in Cur' hic partibus
predicta' comparentibus predictus Quer'
super eodē h'rebi narrabit versus p'fat'
Def. super billa predicta, Et idem Def.
ad tunc petit licentiam interloquendi
usq' (tale ret') p'or' sequen' E fuit put
per Record' inde hic in Cur' residens li-
quet manifeste, Et idem Def. ulterius
H 4 dicit

*Aliter; with
Averment
that the
Writings are
the same.*

dicat qđ penden' pzed' alio bzevi scilicet
(tali die) pzed' Quer' super billa pzed'
modo versus ipsum Def. narrat' prout
per Record' inde hic in Cur' similiter re-
sidentis liquet & hoc, (Ec.) Unde pet' Ju-
diciu' de isto posteriori bzevi penden' pzed'
priori bzevi, Ec. Cum hoc quod idem
Def. verificare vult, (Ec.)

Defendant pleads auter Action pendent
upon a Writ directed to the Sheriff of *W.*
Repl', That nothing was done upon that Writ,
but that another Writ of the same *Teste* was
brought directed to the Sheriff of *S.* and the
Defendant appear'd to the Writ, and that he
declared thereon. Demurs thereupon and
Judgment for the Defendant, because the
Action was brought in *Middlesex*, and so the
Plaintiff had falsified his Writ. 1 *Lut.* 33.
Vide 1 *Lut.* 41, &c.

In Trespass against three, they plead ano-
ther Action pending against two of them, but
nothing is said as to the other: Judgment for
the Plaintiff quod recuperet Damna, be-
cause the Plea commenced and concluded in
Bar, Qđ quer' cūlit prius h̄e p eodem
debo, quod adhuc pendet. 1 *Bro.* 6.

Quia actio pendet in Cod Banco pro
eadem Causa. *Clif.* 2.

Quia alia Villa pendet in trans.
Idem 8, 9, 22.

Quia quer' eli Termino psecut' fuit
Def. per aliud breve de insult' & impri-
sonament', Et unde p Altoru' suu' quere-
bat' quod adhuc pendet Ec. *Bro.* 220.
2 *Mod. Intr.* 14.

In Quare Imp' Epus & Clericus
plicant quod Quer' tulit aliud h're vers
Ep'm tantum quod adhuc pendet, &c.
Repl, Et Demurr inde. Winch. Ent. 782.

Upon an Information, the Defendant pleads
that the Informer exhibited a former Infor-
mation against him in the same Court for the
same Offence, Quod adhuc pendet, &c.
Bro. Red. 437.

Upon the Statute of 5 Eliz. that another
Bill was first exhibited p alium p eod offens
que adhuc pendet, Repl' quod exhibi'
fuit per fraudem, Rej' iuste & vere exhi-
bit' and traverses the Fraud, and Issue there-
on, Thomps. 6. Simile placitum & Repl
per null tiel Record erit' inde, Et dies
dat' ad inferend' Record'. Idem 148. See
Vidian 187.

Defendant pleads, That the Plaintiff im-
pleaded him in the Mayor's Court of the Ci-
ty of L. for the same, Que adhuc existit
mid discontinuat', Repl' p nul tiel Re-
cord', Rob. Ent. 222.

See before, Devision the 5th, for Default
in the Writ, &c.

See Robinson's Entries, pag. 2. Vide Hob. Ent.
222. 223.

To an Action of Trover or Debt on Bond,
it is a good Plea to say, there is another
Action depending in the Courts of *Westminster*
for the same Matter: But that there is an
Action in an inferior Court, is not a good
Plea, unless Judgment be given, 5 Co. 62.
So in an Action of Trespass after the Plain-
tiff hath declared, it is a good Plea to say as
above.

It

It was agreed, That in Trespass, a Replevin depending for the same Cause is a good Plea, if there be no more Defendants in the Replevin than in the Trespass. 8 H. 6. 27.

A *Quare Impedit* is brought against a Bishop, and another as Incumbent: The Defendants plead, that the Plaintiff had brought another *Quare Impedit* against the said Bishop for the same Presentation, which yet depended undetermined, and demands Judgment of the Writ: And it was adjudged a good Plea; but he might have had divers *Quare Impeditis* against divers Defendants *Hob. 138, 139.*

So in Assise of *Darrein Presentment*, it is a good Plea to say, that a *Quare Impedit* is depending for the same Presentation *Idem 184.*

See 39 H. 6. 12. as to the Manner of pleading other Actions real or personal. — And it seems, that if in an Action personal the Defendant pleads another Action depending at the Time of the purchasing the last Writ, he need not say that it is yet depending; for the last Writ is abated in Law, notwithstanding the Plaintiff is afterwards nonsuited in the first Writ, 6 Co. *Ferrar's Case*. And there note the Diversity when the Writ is general, as in Covenant, Detinue, Assize, &c. and when the Certainty is in the Court, for there if the Plaintiff is nonsuited in the first before the Court, the last shall not abate. And when the Writ is special, and the Thing demanded is specified in the Writ, as in *Precipe quod reddat*, &c.

Note,

Note, That where two Actions (tho' of several Natures) depend one upon the other, the Abatement of one is Abatement of both, *Pract. Reg. p. 5.*

But it is said, that where a Man brings an Action for two Things, and it appears that he could not have an Action for the one alone, there the entire Writ shall not abate, but he shall have Judgment for that of which the Action is well brought, and shall be barred for the Residue: But if it appears that he may have an Action in another Form for the other Thing, then the whole Writ shall abate *11 Co. 45. 3 Cro. Jac. 104. Mo. 281. And Saund. Rep. 1. fol. 285, 286.* shews where an Avowry, that is made for more Rent than due shall abate in the whole and where not.

See for Precedents, *Rast. 62, 65. Co Ent. 50, 59. Hern 2. Ast. 7. 1 Brown fol. 6. numb. 27.*

12thly. By Abatement, for that the Action is ill founded.

¶ *Quia dicit quod predict' Def. simul cum quodam P. S. de (Et.) (tali Die & Anno supradict') cent' & obligat' fuer' prefat' R. p predictum Scriptum obligatorium in predict' ducentis libris solvend' eidem R. cum inde requisit' essent & ad eandem solutionem predict' (le Def.) & P. S. obligaverunt se per idem Scriptum aut per Scriptum predict' hic in Cur' platum plene apparet, Et idem Def. dicit quod ipsi non obligaverunt scipos conjunctim sine predict' P. prefat' R.*

For that the Defendant bound himself jointly with another who is not named.

R. per p̄dia' Scriptum obligatoriu', Et quia idem **P. S.** in Villa p̄dia' non nominatur idem **Def.** petit Iudicium & quod Villa illa cassetur, &c.

For that the
Bill is in
Case, and
ought to be
in Account.

R. **E**t p̄d' **C. D.** per **J. G.** Attor̄ suum ven' & defend' vim & injur' quando, &c. Et petit Iudicium de Villa p̄dia' quia dic' quod per Villam p̄dia' apparet, Quod p̄dia' **C. D.** onerabil' existit virtute p̄mission' & assumption' in dia' villa mentionat' in placito Comp̄ ut Ballibus ejusdem **C. D.** sc̄d Et p̄ eo qđ Villa p̄d' est in placito transge' super Casum p̄d' **C.** petit Iudicium de Villa p̄d', Et quod Villa illa cassetur, &c.

For not
counting
Right upon
a Reverter.

R. **E**t p̄dia' **G. H.** per (Ec.) Attor̄ suum ven' & petit iudicium de brevi p̄d', Quia dicit quod p̄d' **Maria** tempore mortis p̄d' **E. S.** fuit cooperata de p̄d' **R. H.** Gen. modo viro suo, Ita quod jus Tenementorū p̄dictorum (si quod, &c.) eisdem **R. & M.** in iure ipsius **M.** reuertebatur, In quo Casu iidem **R. & M.** p̄ idem breve supponere debuissent qđ tenēta p̄d' cum p̄ctis reuertebantur iisdem **R. & M.** in iure ipsius **M.** Et hoc parat' est verificare unde petit iudicium de brevi p̄d', &c.

Et p[re]d' Def. p[re]sens hic in Cur' in p[ro]p[ri]o person[am] sua defend[ere] vim & injur[iam] quando, &c. Et petit judicium de Villa p[re]dia' modo versus eum exhibet quia dicit quod p[er] eandem Villam apparet quod p[re]d', Quer' queritur de duabus separatis & distinctis transgre[ss]ionibus pendentibus super duos separatos titulos ad duo separata & distincta Officia Ubi p[re]dia' Quer' p[er] eisdem transgre[ss]ionibus duas Villas respective exhibere debuisset & non unam Villam solummodo p[er] ambabus Causis Actionis p[re]d' insimul, Et hoc parat est verificare, Unde ex quo idem quer' duas Causas Actionis in una eademque Villa non conjungend[um] superius conjunxit idem Def. p[er] Judic[em] de ead[em] Villa, &c.

For that the Plaintiff declares of two several Tresp[asses] depending upon two several Titles in one and the same Bill.

Where it appears by the Plaintiff's own shewing, that he had no Action for the Whole, or for Part, the Writ shall abate de facto, as in Quare Impedit; where it appears by the Plaintiff's shewing, that the Church is full by his own Presentation; the Writ shall abate de facto,—4 Ed. 4. 32. 2 H. 7. 16.

Non p[re]d' B. p[er] C. D. Attorn[um] suum ven[ire] & defend[ere] vim & injur[iam] quando, &c. Et petit Judic[em] de Villa p[re]dia' modo versus eum exhibet, Quia dicit quod p[er] eandem Villam apparet quod p[re]dia' A. queritur de separatis & distinctis Causis Actionis ubi p[er] legem terre idem A. p[er] eisdem Causis Actionis separatis Villis respective exhibere debuisset & non unam

For that the Plaintiff declares of several and distinct Causes of Action in one and the same Bill.

unam Billam solummodo pro omnibus
Causis Action' p'dia' insimul, Et hoc
idem B. parat' est verificare unde ex
quo idem A. plures Causas Action' in
una eademq; Billam non coniungendas
superius coniungit pet' Judic' de eadem
Billam, &c.

See for Precedents, *Rast.* 50, 91, 179, 184,
362, 422, 569. *Hern* 1, 3, 4, 8, 9, 463, 464.
Ast. 5, 6, 7, 339, &c.

Et quod Billam est in Casu & debet
esse in Compo. 2 Mod. Int. 18.

Quia debum non specificat' fuit Com-
missionar' scdm Statut'. Clif. 7.

Et qd Comissionar' recep' denar' con-
iunctim, Repl' qd Def. solus recepit, Et
travers' qd recepit conjunct'. Bro. Red. fo. 1.

Quia actio locat' in Com in debito Clif. 6.

See before, Division the Fifth, for Default
in the Writ, &c.

Judgments in Abatement.

Upon Vari-
ance be-
tween the
Specialty,
the Plaintiff
does not de-
ny the Ex-
ception.

Et quia p'dia' Quer' Exceptionem
p'dia' (que p inspectionem brevis Nar-
ration' & Scripti p'dia' Cur' hic constat)
non dedic', Idco cons' est quod quer nil
capiat p breve suum p'dia' sed sit in mia
p falso Clamore suo inde, Et quod p'dia'
Def. eat inde sine die, &c. Cons' est
etiam quod p'dia' Defend' recuperet
versus p'fat' quer' dampna sua occone
premiss' ad 101. eidem Def. p discre-
tionem Justie hic ad requisitionem suam pro
miss' & Custas' suis in ea parte sustent'
iuxta

juxta formam Statut', per Cur' hic ad-
judicat', &c. (Vide postea), Et vide
Reg. placit. 278. Clerk's Assist. 2. 12. Placit.
Gen. 9, 10. & Bro. Red. 259.

Judgment
for Defen-
dant with
Costs.

Et modo ven' tam pred' S. quam
pred' G. in pp' personis suis, Et
quia pd' S. in quodam Scripto obliga-
torio versus p'lat' G. hic in Cur' p'olat'
p' quod Scriptum pred' G. tenetur pred'
S. in pred' vigint' libris certo termino
in eodem Scripto content' solvend' nomi-
natur & vocatur p' nomen S. H. de Lon-
don Merchant Taylor & in h'ebi pd' idem
S. nominat' & voc' p' nomen S. B. (&c.)
Sicq' variatio existit int' pred' h'z & di-
ctum scriptum obligatorium super quo
scripto h'z pred' fuit impetrat', Ideo
cons' est quod G. nil capiat p' h'z suum
pdia' sed sit in mia p' falso clamore suo
Et pred' S. eat inde sine die, &c.

Aliter, Upon
Variance be-
tween Speci-
alty and
Writ.

Upon an insufficient Plea in Abatement.

Quod quer' recuperet debum & dampna.

2 T. Judg. 1.

Judicium quod quer' nil capiat p' h'z
p' insufficienc'. Reg. Placitat. 177. Clerk's
Assist. 1. 14.

Upon Demurrer to a Plea in Abatement.

Raft. 102. b.

Et hoc parat' est verificare unde per'
Judicium de h'ebi pred', &c. Et
pdia' Abbatisa non cogn' aliqua p' pd'
G. superius allegat' dic' qd' ipsa ad pre-
dia'

dia' placitum superius in cassation' hze-
bis pzedia' modo & forma pzedia' pstat
neccesse non het nec p legem terre tenet
respondere unde pet' Judic' Et quod
hzebe bonum adjudicetur ac seisma ad-
vocatōd pzedia' p defen' sufficien' re-
spons' sibi adjudicari, &c.

Et pzed' C. ex quo pzed' materia per
ipsum superius allegat' quam ipse
parat' est verificare sufficiens est in lege
ad hzebe pzed' Abbatisse cassand' quam
quidm' materiam pzed' A. non dedic'
nec ad eam aliqualliter respond' sed veri-
ficatōd ill' admittere oīo recusat, ut pri-
us pet' Judic' de hzebi pzed', Et qd'
hzebe ill' cassetur, Et super hoc visis &
intellectis per Justic' hic pstatm' pdia'
ac ceteris pmiis superius in eodem
placito spec' videtur eisdem Justic' quod
idem placitum sufficiens est in lege ad
hzebe pzed' Cassand', Ideo cons' est quod
idem hzebe cassetur, Et quod pzed' A. nil
capiat pet' idem hzebe suum sed sit in
mīa p falso clamore suo, Et pzed' C.
eat inde sine die, &c.

Rast. 160. Defendant pleads, That he was
only a Guest in L. and Commorant in T. Abs-
que hoc, that he was Commorant in L.
Repl', Que ill' fuit Commorant in L. Et
hoc, &c. Unde pet' Judic', &c. Defen-
dant demurs.

Et pzed' M. S. ex quo materia quam
ipse pallegetur sufficiens est in lege ad
hzebe pā cassand' qm' quidm' materiam pā
W. L. non dedic' & ad aliam materiam

Judgment
for the De-
fendant that
the Writ
shall abate.

Quer'in mia'

Def. sine die.

Defendant
demurs.

p ipsum W. L. preallegat' idem W. S. necesse non het per legem terre respondere per Judic, Et qđ breve p̄dicta' cesset, &c.

Et p̄dict' M. L. ex quo materia p̄dicta' Plaintiff joins
p ipsum p̄allegat' quam ipse paratus est in Demurrer.

verificare sufficiens est in lege ad breve suū p̄dicta' manutenend', Et p̄dicta' W. S. materiam ill' non dedic' nec ad eam aliqualit' respond' sed verification' ill' admittere omnino recusat per' judic', Et qđ breve suū p̄dict' bonū adjudicet', Et p̄dicta' W. S. de debito & dampno p̄dicti convincat', &c. Et quia videt' Cur' hic qđ p̄dict' materia p p̄dict' W. L. preallegat' sufficiens est in lege ad breve suū p̄dicta' manutenend' aliqua materia per p̄dicta' W. S. allegat' non obstan' dictum est per Cur' p̄fat' W. S. quod ulterius respond' suo periculo sit, &c. super qua idem M. S. per' audit' Scripti p̄dicta' Et ei legit', &c. per' etiam Audicum Indorsament' ejusdem Scripti. Et ei legit', in hec verba. [The Condition &c.] Quibus lēis & auditis idem W. S. per' licent' inde interloquend' hic usq; a die Pasch' in quindecim dies, Et het, &c. Idem dies dat' est p̄fat' W. L. hic, &c.

Judgment,
that the Defendant shall
answer over.

Li. Lo'.

Rast. 160. Defendant pleads Payment of Parcel pending the Bill. Quer' Demurr' In B. Regis.
Quer' demur'.
Def' jung, Et per' Judic' — Et quod
Villa illa casset', &c.

Et quia Cur' Dom' Regis hic se advisare vult de & super plito p̄dicti priusquam Judic' inde reddit' sit dies inde
Cur' advisare vult.
I dat'

dat' est partibus predia' coram Domino Rege apud Westm' (Ec.) — Ad quem diem ven' tam p'dia' J. P. in ppe' person' sua qm' p'dia' R. W. per Attozn' suum p'dia', Et super hoc lco audit' & intellet' p'lito p'dia' per ipm' R. in cassacon' Bill' pzed' superius p'litar' videtur Cur' Dom' Regis hic quod idem p'litum insuficiens est in lege ad p'dia' Bill' pzed' J. cassand' & vacuand', Per quod dcm est per Cur. Dom' Regis hic p'fat' R. qd' respond' p'fat' J. ad billam suam pzed', Ec. — Sup quo idem R. dic' qd' ipse de deho pzed' virtute scripti p'dia' onerari non debet, Quia dic' quod script' illud non est fem' suum, Et de hoc pon' se super p'iam, Et p'dia' J. P. silit, Ec. Ideo ven' inde Jur', (Ec.)

Judgment,
Qd' Def' re-
spond' Ouster.

Defendant
pleads Non
est factum and
Issue Sur ceo.

Upon a De-
murrer.

Demurrer p' Def, Quer' joins — Et super hoc lco & intelleo p' Justic' hic p'lito p'dia' E. in cassacon' h'is p'dia' quer' superius placitat' videtur Cur' hic quod p'dia' quer' sufficien' materiam ad h'rebe suum p'dia' manutenend' superius placitabit, Per quod dcm est p' Cur' hic p'fat' E. qd' respond' quer' ad B'rebe & Pare sua pzed', Sup quo idem E. (Ec.)

Judicium sur Demure ad p'litum de privileg' Marr' Marelesca ad sea' Attozn' Cod' Banci, 2 Bro. 6. Simile sur Demure, Quod h're cassetur, Winch. Ent. 785. M' W' fac' ad R' W' qd' h're & retozn' cassetur, Et W' fac' de novo Agard, 1 Bro. 2. Non p' per Attozn' Gen' sur Demurr', Bro. Red. 411.

Rast.

Rast. 570. Pet' Judic' de querel' pꝛe- In Replevin.
 dia' eo qđ Capellanus Cantuar' non est
 nōen Dignitatis & idem J. C. in que-
 rel' ill' non nominatur p aliquod cognō-
 men, Unde pet' Judic' & quod querel' ill'
 cassetur & retorñ' Avertioꝝum pꝛedia' sibi
 adjudicetur, &c. Et quia videtur Justic'
 hic quod querel' pꝛed' non est sufficiens in
 lege ad pꝛat' J. C. coram Justic' hic ad
 eand' querel' poni respond' eo quod pꝛed'
 Capellanus Cantuar' non est nōen dig-
 nitatis ac idem J. C. in querel' ill' per
 aliquod cognōen non nominatur Cons'
 est quod pꝛed' J. B. nihil capiat p que-
 rel' suam sed sit in miā p falso Clam
 suo, &c. Et pꝛed' J. C. eat inde sine die,
 Et heat retorñ' Avertioꝝum pꝛed', &c.

Et quia audit' bꝛevi pꝛed' & plenius Because the
 intellco videtur Cur' hic bꝛeve pꝛedia' Original is
 plur' de causis fore insufficiens & cassa- insufficient.
 bile in lege Cons' est qđ pꝛed' quer' ni-
 hil Capiat per bꝛeve suum pꝛed' sed sit in
 miā p falso clamore suo, Et quod pꝛed'
 det' eat inde sine die, &c. Reg. Pl. 280.

Et quia exceptio pꝛed' Justic' hic per Upon the O-
 inspection' ejusdem bꝛebis manifesta est mission of
 & vera, Ideo cons' est quod pꝛed' quer' a Word in
 nil capiat p bꝛeve suum pꝛed' sed sit in the Writ.
 miā p falso clamore, &c.

Vide Clerk's Assist. 2. 4. Reg. Pl. 291, 292.

A. B. sum fuit ad respond' C. It. de Upon Vari-
 pꝛito qđ reddat ei 100 s. quos ei ance in Mis-
 debet & injuste detinet, &c. Et modo ven- nosmer.
 iū pꝛed' C. qm pꝛed' J. in pꝛe per-
 on suis, Et quia pꝛed' C. in quodam
 I 2 scriptis

scripto suo obligatorio vers' prefat' J. hic in Cur' plat' per quod scriptum pred' J. tenetur eidem C. in predia' cent' solid' certo termino in eodem script' content' solvend' nōiatur & vocatur p nōem C. R. (Ec.) Et in brevi pred' idem C. nōiatur & vocatur per nōem C. R. tantum sicq; variatio existit int' pred' breve & pred' scriptum Obligatoriū super quo script' breve pred' impetrat fuit, Ideo cons' est quod pred' C. nihil capiat per breve suum pred' sed sit in miā p falso clamore suo, Et pred' J. eat inde sine die, (Ec.) Et h'c Dom' Regis de par'donatione patentes de Utlagaria in ipm J. occōne promiss' pmulgat' prefat' J. allocentur, (Ec.) Vide Rast. Ent. 459. b.

Upon Vari-
ance be-
tween the
Writ and
Letters of
Administra-
tion.

ff. **E**T quia pred' quer' exceptionem p'd (que per inspectionē & collectionē h'is & Tray pred' Cur' hic satis liquet) non dedic', Ideo cons' est quod pred' quer' nichil capiat per breve suum predia' sed sit in miā p falso clamore suo, Et p'dia' Def' eat inde sine die, Ec

Upon Vari-
ance be-
tween the
Writ and
Testament.

ff. **E**T super hoc visis p Cur' tūc brevi quam testamento p'dia' Exceptio predia' comperta est vera, Ideo cons' est quod predia' quer' nichil capiat per breve suum predia' sed sit in miā p falso clamore suo, Et pred' Defend' eat inde sine die, (Ec.) Clerk's Assist. 14. Reg. Placitat. 280.

Note, That in Quare Impedit by an Executor a Disturbance in the Life of the Testator, the Conclusion of the Count was, **In nunc retardatō Executioni Testi**, and for that Cause upon a Plea in Abatement. and **Vemur super inde** the Writ was abated. *Vide 1 Lut. 3.*

Ideo cons^r est qđ pdia^r Petens nichil capiat p hzebe suum pdia^r sed sit in mia p falso clamore suo, Et p^rdictus tenens eat inde sine die, (Ec.)

Because the Writ was not according to the Register.

Outlawry sur Cap ad satisfac^r pleaded in Adatement.

Repl, Pul tiel Record.

Rejoind, Htur tale Recordum, Ec.

and Day given to bring it into Court.

Ad quem diem hic ven^d dia^r N. p Attorn^r suum p^rdia^r, Et p^rdia^r C. licet solemniter exat^r ad inferend^r Record^r non ven^d sed inde defect^r sup quo dcm^r est p^refat^r N. per Cur^r Regis hic qđ p^refat^r C. ad hzebe & Part^r sua p^rdia^r ulterius non responderetur, Ec.

Sur def^r de Record^r.

ff. Def sum^r debo unde utlagat^r est & per Variance int^r script^r & hze Judic^r quod quer^r nil capiat per hze & hze pated de pardonatō utl^r ei allocat^r. Cl. Ass. 2.

Ad plitm^r Excommeng in debo, Repl per literas Absolutionis & per^r quod Def^r respon^d Judic^r quod Attorn^r Def^r respon^d p magistro suo, Et non inform^r per Attorn^r. Pl. Gen. 11.

Upon Jointenancy plead-
ed by the De-
fendant, &
*relicta verifi-
catione.*

Ad quem diem veni tam predicta' A. qm' pred' T. B. p' Attoyn. suos pred', Et super hoc eadem A. relicta verificatione sua pred' p' ipsam superius ptens' dic' quod ipsa non potest dedicere quin pred' T. B. die impetras' predicta' hris' Original' ipsius A. tenuit tenta' pdia' cum ptin' conjunctim pred' J. N. T. G. &c. ut de libero tenta' prout pred' T. B. superius allegavit, Et pet' licent' de meliori hzebi inde pquirend', Et ei conceditur (&c.) Ideo cons' est qd' predicta' A. nihil capiat p' hzebe suum predicta' sed sit in mia' p' falso clamore suo, Et predicta' T. B. eat inde sine die, &c.

*Quer' pet' li-
cent' querend'
melius breve*

f. Et pred' quer' non dedicendo excep-
tionem predicta' ex causa ille & al' in
hzebi predicta' content' pet' licent' querend'
melius breve, Et her', (&c.) Ideo cons'
est qd' predicta' quer' nichil capiat per hze
suum predicta' sed sit in mia' p' falso cla-
more suo, &c. Cl. Ass. 12. Reg. Pl. 288.

*Def' dic' Bre'
est cassabile.*

f. Ad quem diem coram Dom' Rege
agud Westm' veni partes pred' B. &c.
Et super hoc predicta' B. qd' hze predicta'
C. de Err' in lege cassabile existit, Quia
dic' (&c.) Unde pet' Judic', Et quod hze
predicta' cassetur, (&c.)

Debt upon a Judgment; Plea in Abate-
ment, that the Record was removed into the
Exchequer-Chamber by Writ of Error. De-
murrer thereupon, and Judgment, *Quod re-
spond' Ouster.* 1 Lut. 601, &c.

Et

N. **E**t p^{re}d' C. &c. dic quod ipse non potest dedicere Exceptionem p^{re}dicta' & bene fateatur h^{ab}ere suum p^{re}dicta' ex causa p^{re}dicta' esse cassabile, Et iidem C. & D. C. pet' licenc' p^{ro}quirend' melius h^{ab}ere de Error, Et eis conceditur, &c. Ideo cons' est qd p^{re}dicta' h^{ab}ere de Error' in forma p^{re}dicta' perquisit' casetur, Et p^{ro} nullo heatur, Et qd ipd C. & D. admittantur ad suscitand' & p^{ro}sequend' aliud novum h^{ab}ere de Error' super Record' & Process p^{re}dicta' si voluerint, Et qd p^{re}d' B. interim de p^{re}miss' eat inde sine die.

The Plaintiff in Error acknowledges the Exception and prays Licence to purchase a Writ.

Quo quidem h^{ab}ere de Error' sic in forma p^{re}dicta' cassat' p^{re}d' C. & D. p dies computat' suscitaber' aliud h^{ab}ere de Error' super Record' & p^{ro}cess p^{re}dicta' quod p^{ro}tuler' hic in Cur' coram Justic' hic directa' quod sequitur in hec verba, (&c.)

New Writ per Journeys Accounts.

How to plead a Writ brought by Journeys Accounts. Vide Rast. Ent. 417.

N. **E**t modo hic ad Octab' Secd' Trin' ista eod' Termin' ven' tam p^{re}dicta' J. G. & R. p Attozn' suum p^{re}dicta' quam p^{re}dicta' C. F. & R. W. [omitting him that is dead] p C. D. Attozn' suum, Et super hoc p^{re}dicta' J. G. & R. dic quod post ult' continuac' h^{ab}ere p^{re}dicta' scilicet post Quinden' Secd' Hill ult' p^{re}terit, Et ante ead' Octab' Secd' Trin' p^{re}dicta' R. W. und Tenen in h^{ab}ere noiat diem suum clausit extremu, Et pet' licenc' querendi

Plaintiff alleges the Death of one of the Tenants, and prays a better Writ.

querendi melius breve, Et heant, &c.
 Et quod pred' Attorn' predia' Tenen'
 iam superstit' p Cur' inde quesit' mortem
 predia' non devic' sed illam bene cogn'.
 Ideo predia' C. & J. cant inde sine die,
 &c. Vide Pl. Gen. 3. 4.

After an Effoin for one of the Defendants,
 the Plaintiff says, That one of the Defendants
 is dead, and prays to purchase a better Writ.

N. **E**t modo hic ad hunc diem ven' pre-
 dia' C. p C. Attorn' suum, Et
 dic' qd' pred' B. mortuus est, Et per'
 licent' de meliori brevi inde vers' pred'
 A. pquirend', &c. Et ei conceditur, (&c.)

At the Day of Effoin to Warranty, the De-
 mandant and Vouchee appear, and the De-
 mandant alledges the Death of one of the
 Tenants.

N. **A**d quem diem hic ven' tñd predia'
 P. qm pred' A. per Attorn' suos
 predia' Et super hoc idem P. dic' quod
 predia' J. M. un' tenen' in h' d' Orig
 ipsius P. notat' mortuus est, Et obiit
 post ult' continuacōn' pñti pred' videll'
 post O'rab Sc' Hill' ult' pñti de quibus
 loquela predia' continuat' fuit hic int'
 ipm' P. & pred' A. tenen' p Ward' suam
 usq' ad hunc diem scit' in O'rab Scd
 Trin' tunc pñt' sequen' & ante eandem
 O'ra Scd Trin' videll' apud C. in Com
 pd', Et pet' Licenc' de meliori brevi
 inde pquirend', Et quia pred' A. hoc
 non

non dedic ei conceditur, &c. Ideo cons^r
est quod p^dia^r P. nihil capiat p^r breve
suum p^dia^r, Et p^dia^r A. eat inde
sine die, (&c.) Vide Rast. Ent. 107. b.

There many be may other Things pleaded
in Abatement; but they will generally come
under one or other of these Divisions in
Abatement, which we must leave to the In-
dustry of Clerkship.

Note, By 1 *Ventris* 136. agreed, That if a
Man concludes a Plea in Abatement, as in
Bar, if it be against him that Pleads it, Judg-
ment peremptory is to be given: So if a Man
begins a Plea in Abatement, *Action non*, &c.

Idem 183. Defendant says, If any such Con-
tract, it was made with the Plaintiff and a
Stranger. Plaintiff demurs, because he says
If, &c. and no Averment of Stranger's Life;
and besides, Defendant had taken Impar lance.
Judic' pro Quer'.

Idem 235. Plaintiff brings Trover. Defen-
dant after Impar lance says, the Plaintiff and
two others brought a Trover before, still de-
pending. *Repl'*, That the two died before
this Action brought, p^r quod that Writ aba-
ted. Defendant demurs, *Respondeat Ouster*,
and *Hale* said, Tho' Defendant cannot plead
Disnolmer, *Ancient Demesne*, and the
like, after Impar lance, because he admits he
ought to answer the Writ; yet such a Plea in
Abatement as this he may: But that comes
not in Question, because the Plaintiff replied
to it, and did not demur.

Vide 2 *Ventris* pag. 196.

Uncore prist & adhuc paratus.

F. R. versus J. S.

That he tendered the Money at the Day, and none there to receive it, and that he is yet ready, and tenders it in Court.

Action' non Quia dicit quod ipse idem J. S. in Conditione pzed' superius nominat' apud G. pzed' in pzedia' Com' L. ad pd' domum munitionalem pd' F. R. pzedia' decimo die Aug' pzo' sequen' dat' script' pzed' inter horas horologii primam & quartam post meridiem ejusdem diei parat' fuit & obtulit ad solvend' pstat' F. R. pzedia' 20 l. quas ei ad eandem domum in eodem die & inter easdem horas solvisse debuit secundum formam & effectum Conditionis pzedia' Adq' nec pedia' F. R. nec aliquis p ipso vel ejus nomine ad domum pzed' in eodem die inter horas super limitat' parat' fuit ad pd' 20 l. de pzetat' J. S. recipiend' Et idem J. S. ulterius die qd' ipse semper post oblationem pzed' & post pd' 10 diem Aug' p' sequen' dat' script' pd' hucusq' parat' fuit & adhuc parat' existit ad solvend' pstat' F. R. pedia' 20 l. Et ill' hic in Cur' profert eidem F. R. parat' ad solvend' si (Ec.) Et hoc, (Ec.) Unde, (Ec.)

Repl'

(Precludi non) Quia dic' qd' pd' J. S. ad pedia' domum pdicto decimo die Aug' p' sequen' dat' script' pedia' inter horas plimitat' non obtulit ad solvend' eidem F. R. pd' 20 l. secundum formam & effectum Condition' pedia' put pedia' J. S. super allegavit Et hoc parat' est verificare unde

de pet' iudicium & debum suum predict' unacum dampnis suis occasione detention' debi illi sibi adjudicari, &c.

Et predict' J. S. ut prius die qd' ipse idem J. apud predict' domum in predicto 10 die Aug' prior' sequen' dat' script' pd' inter horas horologii primam & quartam post meridiem ejusdem diei obtulit ad solvend' eidem J. predict' 20 l. quas et ad eandem domum in eodem die & inter easdem horas solvisse debuit secundum formam & effectum Condition' predict' prout ipse superius allegavit Et de hoc post se super priam Et pd' J. sicut Ideo (&c.)

Rejoinder.

Issue.

Vide Thomps. 159, 181.

(Precludi non) Quia die quod ipse super predict' decim' diem Aug' prior' sequen' dat' script' pd' inter horas horologii primam & quartam post meridiem ejusdem diei parat' fuit ad recipiend' de p'rat' J. S. predict' 20 l. quod nec predict' J. nec aliquis al' ex parte predict' J. adtunc & ibi parat' fuit ad solvend' eidem J. easdem 20 l. Absq' hoc qd' pd' J. S. ad predict' domum (&c.) parat' fuit ad solvend' eidem J. pd' 20 l. secundum formam & effectum Condition' pd' prout pd' J. superius allegavit Et hoc (&c.) Unde pet' iudic' & debum suum pd' unacum dampn' suis occasione detention' debi illi sibi adjudicari, &c.

Al' Repl.

Inconsim. casus.

Traverse.

Et predict' J. ut prius die qd' ipse ad predict' domum (&c. ut ante) parat' fuit ad solvend' eidem J. pd' 20 l. secundum formam & effectum Condition' pd' — Et de hoc

Rejoinder.

Issue.

hoc pōd se super pziand Et pōd f. filit'
Ideo Precept' est Die (Ec.)

Vide 2 Mod. Intr. 234. Bro. Vad. 504.
Vide 1 Bro. 173. Quod ad diem & locum
in Condicon Def. parat' fuit solvere
Quer' Denar Et quod quer' seu aliquis
pro eo non veni ibm ad recipiend' Repl' qd'
nec Def. nec aliquis pro eo parat' fuit ad
solvend'. 1 Bro. 173. & Plac. Gen. 331 Vide
Tender, Refusal, & Uncore prist. Clift. 189.

Def. pleads,
That he had
paid the
Plaintiff
Part and ten-
dred the Rest
before the
Bill was ex-
hibited.

Quando, (Ec.) Et quoad ult' promiss.
& Ass. in Narr' pzed' superius fie-
ri supposit (Non Assumpsit & Issue tender)
Et quoad pziim' promiss. Ec. (Accon' non)
quia dic' quod bene & verum est quod
ipse idem C. indebitat' fuisset eidem M.
in pzed' 35 l. pro feno sed idem C. ulterius
dic' quod ipse idem C. post promiss. & ass.
ille Et ante diem exhibicon Bill' pzed'
scitit (tali die) apud (Ec.) solvit & satisfacit
pzed' M. 25 l. de pzedia' 35 parcell
quas quidem 25 l. idem M. recepit Et qd'
ipse idem C. post promission' & assumpticon
ille Et ante exhibi Bill' pzedia' videlicet
illi die (Ec.) apud Ec. obtulit ad sol-
vend' eidem M. 10 l. pzedia' 35 l. resid' ac
qd' ipse semper post pzedia' (item diem
Ec.) hucusq; parat' fuit & adhuc parat'
eritit ad solvend' pzedat' M. easdem 10 l.
videlicet apud S. pzed' & pzedia' 10 l. idem
C. hic in Cur' profert ad solvend' pzedat'
M. si idem M. easdem 10 l. de pzed' C.
recipere veller Et hoc (Ec.) Unde, (Ec.)

Et adhuc pa-
ratus, &c.

Repl.

Et pzed' M. quoad pziim' pōd C. quoad
pōd ult' promiss. & assump' in Narr' pōd
supe

superius spec per ipm C. modo & forma
 predicta superius plitat' pon' se silit' super
 patriam Et quoad pred' plitum' pred' C.
 quoad pred' prim' (Ec.) idem M. dic' qd' *Non obtulit*
 (cludi non, Ec.) quia dic' quod ipse idem *and Issue.*
 C. non obtulit (Ec.) modo (Ec.) Et hoc
 pet' qd' inquit' per priam' Et pd' C. silit'
 Ideo tam ad triand' erit' istud qm pred'
 at Erit' inter partes pred' superius silit'.
 juna' ven' inde iur', (Ec.)

Vide Bro. Vad. 504. Tender of the Money
before the Original. 1 Lut. 224, 227, &c.
Idem 238.

¶ Accon' non quia dic' quod ipse sem- *Parat' ad*
 per fuit & adhuc existit parat' ad deli- *deliberand'*
 band' pstat' M. script' pd' ac ill' parat' ei- *script.*
 dem M. deliband' hic in Cur' pferit super
 quo idem M. script' pd' de pstat' B. hic in
 Cur' recepit Ideo cons' est qd' idem B. de
 script' ill' sit quiet' (Ec.)

S. vers' R. pro 30 l. to be paid upon
 Delivery, &c.

Et pdicta R. ven' & defend' vim & in- *Def. pleads,*
 juriā quando, Ec. Et quoad 20 l. *as to 20 l.*
 de pred' 30 l. idem R. dic' quod ipse sem- *Part, Uncore*
 per post delibac' hon' & mercimon' pred' *pri.*
 hucusq' parat' fuit & adhuc parat' exi- *Quoad resid'*
 stit' ad solvend' pstat' S. eadem 20 l. *10 l. non debet*
 Et ill' hic in Cur' pferit parat' eidem S. *per patriam.*
 solvend' Et quoad 10 l. resid' de pred'
 30 l. idem R. dic' quod pred' S. Action'
 suam pred' inde versus eum here non de-
 bet Quia dic' quod ipse non debet pstat'
 S. eadem 10 l. nec aliquod denar' inde
 in forma qua idem S. superius vers' eum
 nar:

Repl.
Plaintiff ac-
cepts the
20 l. and for
Damages
pleads Re-
quest, and
Refusal to
pay.

narrabit Et de hoc pōd se super priam'
Et pzed' S. inde silit (Et.) Et super
hoc pzedia' S. hic in Cur' de pstat' R. pō
20 l. recepit Ideo idem R. sit inde quie-
tus, Et. Sed pzedia' S. pro dampnis
suis occasione detencion' earundem 20 l. hend'
die qd' ipse post deliberation' bonorum &
micion' pzed' & ante diem impetrat'
pzed' bzis' Orig' ipsius S. scilicet (tali die
& anno apud, Et.) idem S. requisivit
pdia' R. ad solvend' eidem S. easdem
20 l. qd'q' idem R. ill' eidem S. solvere
adtunc & ibid' penitus recusabit & hoc
parat' est verificare Unde pet' iudicium
et dampna sua occasione detencion' earun-
dem 20 l. versus eū here debeat, Et.

Defendant
rejoins *semper*
paratus.

Traverseth
the Request.

Et pzedia' R. ut prius die quod ipse
semper post deliberat' bonorum & merci-
mon' pdia' parat' fuit ad solvend' pstat'
S. pzedia' 20 l. prout ipd' superius alle-
gavit absq' hoc quod pdia' S. requisivit
ipsum R. ad solvend' eidem S. easdem
20 l. modo & forma prout idem S. supe-
rius allegavit Et hoc parat' est verifi-
care unde pet' Iudicium si pzed' S. ali-
qua dampna occasione detencion' earundem
20 l. versus eū here debeat, Et.

Rejoinder.
Quod requisi-
vit, and Issue.

Et pzedia' S. ut prius die quod ipse re-
quisivit pzed' R. ad solvend' eidem S. pō
20 l. modo & forma prout ipse superius
allegavit Et hoc pet' quod inquitur
p patriam Et pzed' R. silit Ideo quoad
triand' Et.

Vide Plac. Gen. 317. Hanf. 110.

A. versus B.

A Et non quia die quod ipse idem B. sup p̄dict' 29 diem Sept' Anno, &c. sexto per spatium dimid' unius hoze p̄xor' ante occasum solis ejusdem diei ad p̄dict' Com p̄anditoziam aulam Anterioris Templi London' parat' fuit & obtulit ad solvend' p̄fat' A. p̄dict' 15 l. p reddit' p̄dict' quas ei super eundem diem solvisse debuisset scdm formam & effectum Inventur' p̄red' qd̄ nec p̄red' A. nec aliquis al' ex parte ejusde A. litteime autorizat' adtunc & ibm ven' vel parat' fuit ad recipiend' de eodem B. p̄red' 15 l. p ipsum B. in forma p̄red' oblat' Et idem B. ulterius die quod ipse idem B. semper ab eodem 29 die Sept' hucusq̄ parat' fuit & adhuc parat' existit ad solvend' p̄fat' A. p̄d 15 l. & denar' ill' idem B. hic in Cur' p̄fert parat' fore solvend' p̄fat' A. si idem A. ill' de eodem B. recipere vellet Et hoc, &c. unde, &c.

Tender of
15 l. Rent,
with an Un-
core Prist, in
B. R.

Et super hoc p̄red' A. recepit hic in Cur' de p̄fat' B. p̄red' 15 l. p eund' B. in Cur' p̄olat' Iō idem B. sit inde quietus, &c. Sed p̄red' A. p̄o dampnis suis occone detention' earundem 15 l. p̄o testando quod p̄red' B. non parat' fuit & obtulit ad solvend' eidem A. p̄red' 15 l. p̄out idem B. superius inde placitando allegabit p̄o p̄lito idem A. die qd̄ post p̄red' 23 diem Sept' Ann' 6 supradicto scilicet p̄mo die Jan' Anno Regni die

Plaintiff ac-
cepts the 15 l.
Rent.

Sed pro damp-
nis protestando
obtulit.

Pro placito a
Request and
Refusal to
pay.

Dñi Regis nunc 7 ipse idem A. apud
(Ec.) requisivit pdia' B. ad solvend'
eidem A. pdia' 15 l. sed pñ Bille eidem
A. solvere adtunc & ibidem recusavit
Et hoc, (Ec.) unde, Ec.

Rejoin'd.
Non requisivit
and Issue.

Et pdia' B. dic' qñ pdia' A. non re-
quisivit pdia' B. ad solvend' eidem A.
pdia' 20 l. modo & forma pñt pñd' A.
supius replicando allegabit Et de hoc
pñd' se super pñand Et pñd' A. silit'
Ideo, (Ec.)

Vid. 2 Mod. Intr. 236. & Bro. Red. 200.

In Account,
Quoad part'
non debet &
perfecit legem.

ff. **E**t pñd' A. ven' & Defend' vim &
injur' qñdo, Ec. & quoad 28 s. de
pdia' 50 s. idem A. dic' qñ ipse non de-
bet pñat' C. pdia' 20 s. nec aliquem de-
nar' inde in forma qua idem C. supe-
rius versus eum narrabit Et hoc Ec.
[Pñt legem, Ec.] Ideo cons' est qñ pñ
C. quoad pdia' 28 s. Nihil capiat per
h'rebe suum pñd' inde Et quoad pñd'
22 s. de pñd' 50 s. idem A. dic' quod ipse
a tempore compoti pdia' huc usq; parat'
fuit & adhuc existit ad solvend' pñat' C.
22 s. ill Et hoc, (Ec.) Et ill' hic in Cur'
pñfert eidem C. parat' ad solvend' Et
super hoc idem C. hic in Cur' de pñat' A.
eosdem 22 s. recepit ideo inde A. sic
inde quietus, Ec. sed pñd' C. pro damp-
nis suis occasione detention' 22 s. ill' h'end'
dic' quod ipse pñmo die Jan' Anno, Ec.
& sepius post idem festum apud A. re-
quisivit pdia' A. ad solvend' eidem C.
eosdem 22 s. Et idem A. illos eidem C.
oño solvere recusavit Et hoc, (Ec.) unde
pet'

Quoad resid'
Uncore Prist.

Plaintiff re-
ceives the
Money, Sed
pro dampnis,
Request and
Refusal.

pet' judic' & da sua occasione detentionē 22 s.
ill' sibi adjudicari, &c.

Et p'ed' M. dic' qd' ipse tempore requi- Rejoinder.
sition' p'edict' 22 s. fac' eosdem 22 s. apud Of Tender
S. p'ed' obtulit C. parat' ad solvent' and Refusal,
Et idem C. 22 s. ill' adtunc ibm oīo re-
cipere recusabit Et hoc, (&c.) unde pet'
Judic' si p'ed' C. aliqua dampna ea oc-
cōne here debeat, &c.

Et p'ed' C. dic' qd' p'ed' M. tempore Surrejoinder.
requisition' p'ed' 22 s. fac' non obtulit Non obtulit.
eidem C. eosdem 22 s. parat' ad solventi And Issue.
p'out p'edict' M. superius allegavit Et
hoc pet' qd' inquiratur per p'iam, &c.
Vide Plac. Gen. 363. 1 Bro. 200. Quod
semper parat' fuit solvere denar' quos
quer' recepit in Cur'. Plac. Gen. 255.

By *Ventris 1st Part, pag. 322.* In Debt for
Rent incurred at Two half Years.

Non debet to one, to the other, *Aliaon*
Non, because he was ready to pay at the
Day, &c. and has been ever since. Et p'ro-
fert in Cur' Ideo pet' Judic' de dampn',
Plaintiff demurred, for that he did not say
Quod obtulit, for where the Time and
Place of Payment is certain, Semper para-
tus is no Plea without an Obtulit.

For the Defendant it was said, that the
Plaintiff ought to reply to a Demand. 1 *Inst.* 43.
'Tis a good Plea for Heir in Dower to save his
Damages, to say, That he was always ready,
Rastals Entries 159. Semper paratus is
pleaded without an Obtulit. So 1 *Rolls* 573.
no Mention made of a Tender.

But then another Fault was found, that it was pleaded in Bar, whereas it ought to have been only in Bar of Damages and not to the Action, and this was agreed to be fatal.

But the Court held the Plea to be naught for the other Cause also.

A. *versus* B. for Detinue of Cattle after an *Emisset*.

Defendant
pleads Ten-
der of the
Cattle and
Refusal to
accept them.

Action' non quia dic' qđ pzed' A. die & anno supradictis apud D. pđict' requisivit ipsum B. ad pđict' septem vaccas & duas Juvencas Anglice Heifers, eidem A. super quartam diem Aprilis tunc ppor' sequen' deliberand' quas quidē sept' vaccas & duas Juvencas idem B. pđ quarto die Aprilis obtulit sed idem A. Vaccas & Juvencas ill. de eodem B. recipere adiuncte & ibidem penitus recusavit Et idem B. ulterius dic' qđ ipse semper a pzed' quarto die Aprilis hucusque parat' fuit & adhuc existit ad deliberand' pzetat' A. easdem Septem Vaccas & duas Juvencas qđq. Vacce & Juvence pđict' sunt fere nature & hic in Cur' convenient' fugari non possunt Et pet' diem idem B. ad Vaccas & Juvencas pzedict' pzetat' A. deliberand' Et hoc parat' est verificare unde pet' Iudiciū si pzedict' A. aliqua dampna ea orōne habere debet, &c. Ideo cons' est qđ pzed' B. habeat deliberationem Septem Vaccarū & duarum Juvencarum pzedict' Et pzed' B. in Mia, &c.

Et Uncore
Prist, sed quod
sunt fere na-
ture Et pet'
diem ad deli-
berand', &c.

See for other Precedents, 3 *Brownl.* 176.
Ash. 220, 244, 246. *Rast. Ent.* 179. *Vet. int.* 202.
Co. Ent. 141. *Thompson* 181. *Dyer* 82.

Uncore Prist.

Uncore Prist, id est, adhuc paratus, it's said, ought to be pleaded the same Term the Declaration is of, without Imparlance; (*Vide postea.*)

This is a Plea used by a Defendant to save the Forfeiture of his Bond, being sued for a Debt due at a Day past, saying that he tendred the Debt at the Time and Place, and that there was none to receive it, and that he is now also ready to pay the same. 7 *Ed.* 6. 83. And this it's said will save the Defendant from the Penalty of his Obligation; and if now the Plaintiff will not take it, but take Issue upon the Tender, and it be found against him, he loseth his Money, and is remediless for it for ever. *Co. Litt.* 207. *Kelw.* 74. *Dyer* 83. 9 *Co.* 79. *Paget's Case.* The Definition of it.
The Effect thereof.

And some Books say, it ought not to be pleaded after Imparlance, without Consent of the Parties, as 33 *H.* 6. 2.

But others seem to be of a contrary Opinion, and that if the Defendant in Debt upon an Obligation imparl until another Term, and then Plead, that he tendred the Money at the Day and Place, and that no Person was there to receive it, and that he is [*adhuc paratus,*] it is a good Plea, and it shall be no Estoppel by the Imparlance to say, *Ad ipse est adhuc paratus.* *Dyer* 300. When it may be pleaded after Imparlance.

When not.

And yet in Dower, if the Tenant Imparl, he shall not say after, *Quod illi fuit semper paratus, &c.* 5 *Ed.* 4. 141.

When it needs not.

Others speaking when it needs not be pleaded, &c. say, That if an Obligation be with Condition for the Payment of a Lesser Sum, and the Obligor tender, and the other refuse, he needs not plead *Uncore Prist.* 21 *Ed.* 4. 42 & 52.

Needs to be pleaded.

But others contradict this, as 21 *H.* 6. — And by 21 *Ed.* 4. in Case of a lesser Sum, the Obligor plead *Uncore Prist*; and it is there also said, That if the Obligee take Issue upon the Tender, and it be found against him, he hath lost the Advantage of the Obligation for ever. *Vide* 20 *Ed.* 4. 1.

Bond to stand to Arbitrament.

If one be obliged to stand to to the Arbitrament of *J. S.* in Debt brought upon the same Bond, he shall not say *Uncore Prist*; seems to be otherwise in Debt brought for the Arbitrament.

Executors.

It's said, that where Executors plead tender of a Rent, they ought to plead *Uncore Prist*, 7 *Ed.* 6. 26. *b.*

Annuity.

In Annuity to the Distress *Uncore Prist*, is no Plea, but the Defendant shall pay the Arrearages before and after the Writ purchased. 2 *H.* 4. 3. *b.*

When a Condition collateral, as perform Award.

Regularly, if the Condition of a Bond be collateral, and out of it, as to perform an Arbitrament, &c. after a Tender and Refusal, the Party shall not say *Uncore Prist*, but it is peremptory and a perpetual Bar to the

When it is of the Essence of the Bond, as to pay Money.

Party that refused. But it is otherwise, if the Condition be of the Essence of the Bond, as to pay Money. *Vid.* 4 *Ma. Dyer* 150. and that though

though the Place of Payment be express'd in the Condition, yet he ought to plead **Uncore Prist**. 22 *Ed.* 4. 25. 7 *Ed.* 4. 3.

If a Bond of 100 *l.* be made with Condition for Payment of 50 *l.* at a certain Day, Tender and Refusal at the Day without saying, **Uncore Prist**, is not a Plea in an Action of Debt; but he ought to say, **Qd est adhuc paratus**, *Bond to pay a less Sum.* *Uncore Prist & profert in Cur.* and ought to tender the Money in Court.

But if one be bound in 200 Quarters of Corn, for the Delivery of 100 Quarters, if the Obligor at the Day tenders the 100 Quarters, he shall not plead **Uncore Prist**, because tho' the Corn be Parcel of the Condition, yet it is **bona peritura**, and is a Charge to the Obligor to keep it; and the Reason why, in the Case of the Bond, the Sum mentioned in the Condition is not lost by the Tender and Refusal, is, because it is not only a Duty and Parcel of the Bond, but also because the Obligee had Remedy by the Law for it. *Bond in Corn to deliver Corn.* *Bona peritura.*

Yet is otherwise of a single Bond, or of a Statute, or of a Recognizance acknowledged with a Defeazance for Payment of Money; for there Tender and Refusal bars the Party for ever to recover it, because that Parcel of the Sum contained in the Bond, Statute or Recognizance, was contain'd in the Defeazance, and in this Case he needs not plead **Uncore Prist**. *Single Bond, &c. with Defeazance.* *Premptory Bar.*

So of a Bond with a Condition to do a collateral Act, as to deliver Timber, or to stand to an Arbitrament. *Co. Litt.* 207. *a.* 9 *Co.* 79 *a.* *Condition collateral.*

If one be bound that a Stranger shall make a Bond to the Obligee, it is sufficient to say *Bond to be made by a that Stranger*

that the Stranger tendred it, and the Obligee refused it, without saying **Uncore Prift.** 10 H. 6. 16.

So if one be bound, that J. S. and a Stranger perform all the Covenants contain'd in certain Indentures, between the Obligee and the said J. S. and there is a Covenant in the Indenture, that the said J. S. shall pay to the Obligee at a certain Day 100 l. If J. S. tender the Money and he refuse it; in Debt brought upon the Bond, the Obligor may say, that J. S. tender'd and he refused, without saying **Uncore Prift.** 27 H. 8. a. 19 H. 8. 12. a.

Feoffment on Condition to pay, &c.

If one makes a Feoffment by Deed upon Condition, that the Feoffor shall pay a certain Sum of Money; the Feoffor may by Agreement between them give another collateral Thing in Satisfaction, and if he tender the Money and the other refuse, he is perpetually discharged of the Money, and shall never pay it. 9 Co. 79. a.

Bill to deliver Corn.

And if one by a Bill Obligatory acknowledge himself to owe Twenty Quarters of Corn, to be delivered such a Day at a certain Place, and if he fails, to forfeit 10 l. Tender and Refusal is no Plea, without saying **Uncore Prift.** And it seems by *Phelpdale's Case*, That if one makes a Bond, to B. and delivers it as his Deed to C. to deliver to B. if C. tender the Deed, and B. refuse, it is peremptory. 1 Eliz. Dyer 167. 5 Co. 119.

On Forfeiture. **Uncore Prift.** Bond delivered to C. to be delivered to B. Peremptory.

Tender in Court.

If one tender the Money in Court, and the Party refuse it, he shall never plead **Uncore Prift**, because it is a Refusal upon Record.

Money brought in Court on Motion.

And *Stiles* in his *Practical Register* (Tit. *Process and proceeding in Law*) says, That where the

the Defendant did tender unto the Plaintiff the Moneys (for which the Action is afterwards brought against him) before the Action was brought, and the Plaintiff refuseth them, and notwithstanding sues the Defendant; the Court will (upon Motion and Proof of this Tender) order the Money to be brought into Court, and will stay the Plaintiff's Proceedings, for the Court will not encourage them to be vexatious.

Note also that it's said, That the Defendant shall be concluded his Plea of *Couts Temps prist*, or *Semper paratus* after Imparlance. 5 Ed. 4. 141. which was in Dower. See more in 21 H. 3. & 14 H. 6. 3. 7 H. 6. 7 & 17. 2 H. 4. 7. & 7. H. 4. 4 9.

A. versus B.

Quoad 7 l. 8 s. 6 d. i fecit legem — Et Quoad part
quoad 59 s. 6 d. resid' idem B. dic' nil deb' &
quod ipse non potest dedicere Acton' pū perfec' legem.
N. quoad pred' 59 s. 6 d. nec quin ipse
debet pstat' N. pū 59 s. 6 d Et die quod
ipse parat' est & semper huc usq; parat'
fuit ad reddend' pstat' N. eodem 59 s. 6 d.
Et ill' hic in Cur' profert pstat' N. Quoad resid.
inde reddend' Et hoc, (&c.) unde per' uncore prist.
Judic Et qū pred' N. de dampnis oc-
cōne debi ill' rcludatur, &c.

Et pred' N. dic' qđ predia' B. ad re- Repl.
sponsum pred' quoad pred' 59 s. 6 d. That he
admitti non debet quia die nō ipse als ought not so
scitit Term Pasch p' p'eterit' p Part pū to plead af-
per ipsum in forma predia' fac' hic in ter Impar-
Cur lance.

Cur narrabit ad quam pzed' B. pet' licentiam inde interloquendi hic usque ad hunc diem scilicet a die Sec' Trin in tres Sept' ad respond' pstat' A. de p'ito p'd Et habuit, &c. Unde pet' Iudiciu' si pzed' B. ad dicend' qd ipse semper huc usq' parat' fuit & adhuc existit ad reddend' eidem A. pzed' 59 s. 6 d. admitti debeat, &c. — Et quia videtur Cur' hic qd pzed' placitum quoad pzed' 59 s. 6 d. p' p'efat' B. superius placitat' non est sufficien' in lege Ideo cons' est qd pzed' A. recuperet versus pstat' B. p'dia' debm & dampna sua occasione detent'or' debi illi nec non p' mis' & cust' suis circa sextam suam in hac parte appoit' ad requisit'or' ipsius A. ad 16 s. 8 d. per Cur' taxat' Et pzed' B. in mia, &c. Vide 1 Bro. 200.

*Judic' pro
quer'.*

Plaintiff replies, That the Defendant ought not to be admitted to plead *Semper paratus*, for that he was formerly returned in *Issues vers. Quer'.*

Et pzed' A. die qd ipse pcludi non qui die qd ipse als scilicet octavo die Hail Anno Regni die Dñi Regis nunc 21 p'scur' fuit extra Cur' ipsius Dñi Regis de Banco hic apud Westm quoddam b'reve ipsius Dñi Regis de Distring' vsus p'd Def. in p'ito debi sup quo p'd A. modo superius p'itand' supponendo per idem b'reve quod pzed' Def. redderet ei 60 s. quos ei debet & injuste detinet in quo quidem b'revi de Distring', &c. idem Def. returnat' fuit p' b'reve pzed' in exit' prout p' Record' inde in Cur' hic residend' plenius liquet Et hoc parat' est verificare unde pet' Iudic' si pzed' Def. contra Record' p'dia' admitti debet qd ipse est & semper parat' fuit ad solvend' pstat' Quer'

Quer' pzed' 60 s. in forma pzed', &c. Unde pet' judicium & dampna sua octone detentcon debi illi sibi adjudicari, &c. Def. Demurr' Trin. 20 H. 7. Rot. 546. p Uncore Prist Et Escoppel qđ Def. compuit sur Distringas. 1 Bro. 201.

There are also some Things that in many Cases may be pleaded after the last Continuance, as Excommunication, Misnomer, Entry of the Party, Release, &c. but of this more in its proper Place; we are now examining Matters that may be pleaded before Imparlance, &c.

See the End of this Book, Tit. Bar puis Barrein Continuance.

As to Tender.

It appears before, that sometimes it may be pleaded without an *adhuc paratus*, and sometimes also after an Imparlance.

It is also pleaded in several Actions as in Trespass, Tender of Amends is often pleaded in Bar, of which more after in Tit. *General Bar*.

As for Precedents of Tender *Denar'* and Refusal, see before, and see *Bro. Vad.* 89, 107, 279. *Bro. Red.* 93, 107. *Lev. Ent.* 30. 1 *Bro.* 114.

Pleading of Tender of the Residue of Money due, and not levied by Tenant *per Elegit*, and thereupon a *Scire facias* brought. 2 *Saund* 69.

Tender in Cur', *Thomps.* 60, 66, 159, 265, *Plac. Gen.* 255. 2 *Mo. Intr.* 143. *Bro. Red.* 90, 290. *Cl. Assist.* 104. *Bro. Vad.* 103.

Tender

Tender of a Release and Refusal. *Lev. Ent.*
 44. *Vid. Thef. Brev.* 162.

Tender de Cartis in Cur', 1 *Bro.* 264.

Pleading of Tender of an Award to the Defendant, and that none came on his Part to receive it. 2 *Saund.* 185.

Tender of Money before the Original brought. 1 *Lut.* 224, 227, &c. 238.

Tender of Rent reserved upon a Lease for Years upon the Land leased, &c. 3 *Lev.* 143.
 1 *Lut.* 367, 593.

And Note, That in case the Defendant after Impar lance, as to the 2, 3, & 4. Promise, pleads *Non Assumpsit*, and Issue thereon, and as to the first Promise, he pleads *Couts temps ppris*, and Tender of the Money before the Action brought, & *pferit in Cur'*, Demurrer thereupon, for that he says, *pferit easdem viginti & quinque*, omitting the Word *Libd*, and also for that the Plea was pleaded after Impar lance. And Judgment was given for the Plaintiff, because it appear'd that the Tender was after two Requests to pay the Money, one by the Wife *dum sola*, the other by them both after Marriage. *Vide* 1 *Lut.* 224, 227.

Vide 1 *Lut.* 238. upon an *Indebitatus assumpsit* for several Sums upon several Promises after Impar lance. Defendant pleads that the several Sums amounted to 66*l*. And as to Part, *Non assumpsit*; and as to the Residue, that the several Promises were for one and the same Bargain of a Horse; and that as to the Residue, he tendred it before the Original, and that the Plaintiff refused, and that he is *adhuc paratus & pferit in Cur'*. The Plain-

Plaintiff demurred generally; and the Plea was adjudged ill by reason of the Imparlance, and also for Incertainty, for which of the Promises the Money was tendred. *Vide Raymond 449. Hill. 11. W. 3. R.*

Farther Advantage by Demurrer.

BESIDES the Advantage before mentioned given to the Defendant to plead in Abatement, &c. he may also take another Advantage before he plead directly in Bar of the Action, tho' after an Imparlance, and that is to demur or abide in Law; for when the adverse Party is advised, That the Count or Declaration is insufficient in Law, then he may demur in Law, and refer it to the Judgment of the Count; for Matters in Law are to be decided by the Judges, and Matters in Fact by Juries.

And Note, That a Demurrer may be either to the Count or to the Plea, or upon Parts of the Pleading; and also it may be either General or Special.

But we will only in this Place look into those relating to Writs and Declarations, or that which is in the Nature thereof, the other to Bars, &c. being more proper to follow in the Fourth Part of this Treatise; which may be divided as follows.

De

Demurrer al
Parr, &c. in

1. Annuity.
2. Appeal.
3. Assize.
4. Audita Querela.
5. Case.
6. Covenant.
7. Debt.
8. Formedon.
9. Hutes & Cland.
10. Information.
11. Monstrance de Droit.
12. Prohibition.
13. Quare Impedit.
14. Scire Facias.
15. Trespass.
16. Warrantia Charte.
17. Waste.

1. Demurrer al Count in Annuity. 2 Rast.
Ent. 147.

Et pzed' R. p S. Altorz' suum ven'
& def. vim & injur' quando, &c.
Et dic' qd' pd' materia in Parr' pd' con-
tent' non est sufficiens in lege ad actionem
pzed' manutenend' Unde pet' judic' & qd'
idem A. ab Action' sua pzed' hend' pclu-
datur Et pzed' A. ex quo ipse sufficien'
materiam in lege ad action' suam pzed'
manutenend' supius declarabit, Et pre-
dic' R. eam non dedic' nec ad eam ali-
qualiter respond' petit judicium & an-
nuum Reddit' pzed' & arrearag' ejusdem
Continuance. unacum damp, &c. sibi adjudicari [Et
quia Justic', &c.] Vide postea.

Alit'

Alit' scdm Winch. Entr. fol. 9.

Et p^o L. p. J. L. Attorn' suum ben' & defend' vim & injur' quando, &c. Et dic' qd' Parr' p^oed' minus sufficiens in lege existit ad p^oed' T. C. & A. accon' tuam p^oed' versus ipsum L. h^ond' manutenend' Adq' ipse ad Parr' ille modo & for' na p^oed' declarat' necesse non het nec p^o le- zem terre tenetur respondere Et hoc parat' est verificare Unde p^o defectu suffi- cien' Parracones in hac parte idem L. pet' Judic' & qd' p^o T. C. & A. ab accone tua p^o vers ipsum L. h^ond' p^ocludantur, &c.

Et p^o T. C. & A. ex quo ipse sufficien' materiam in lege ad ipsos T. & A. accon' tuam p^oed' vers p^ofat' L. h^ond' manutenend' upius declaraver' quam ipse parat' sunt verificare quam quidem materiam p^o L. non dedic' nec ad eam aliquialiter re- pond' sed verification' ill' admittere oio re- usat pet' judic' & annuū reddit' p^oed' inacum arrearag' ejusdem & dampnis suis occone substraconis Annui reddit' ill' eis adjudicari, &c. Vide Winch Ent. fol. 8.

The Count was in Annuity for the Assign-
ment of a Tenant for another's Life, against the
Successor of a Bishop for Arrears of Rent and
Profits belonging to the Constable of *Wisbech*-
Castle, granted by the late Bishop to one for
the Life of Three other Lives who assigned it
to the two Plaintiffs.

Hut-

Hutton demurr'd to the Count : 1. *Exception*, That the Creation of a new Bishop did not appear, and so non constat in what Time the Annuity was arrear. That the Successor of a Bishop shall not be charged with Arrears of the other's Time; but contra of a Parson, for that is out of the Parsonage. 22 *Eliz.* 370. Executor of a Bishop shall be charged, but not the Parson.

2. Demurren al. Appeal de Murder. *Vid. Co. Ent. fol. 57.*

Et pꝛed' C. M. in pꝛopꝛ persona sua ven' & defendi vim & injur' quando, &c. & omnem felon' & murdꝛum & quicquid, &c. Et pet' auditum hꝛis de Appell pꝛed' & Actoꝛn' ejusdem hꝛis Et ei legitur in hec verba.

ff. Jacobus Dei Gra' (&c. recitan' le bꝛief & Actoꝛn') Quibus lea' & auditis idem C. pet' iudicium de bꝛebi pꝛ quia dic' qđ bꝛebe pꝛedia' minus sufficiens in lege existit ad ipsum C. ad bꝛebe illud respond' compellend' Et hoc parat' est verificare. Unde pet' iudic' de bꝛebi pꝛed' & ei inde allocat' & quod bꝛed' illi cassetur, &c. Et quoad feloniam & murdꝛum pꝛed' idem C. dic' qđ ipse in nullo est inde culpabilis Et inde de bono & malo ponit se super Priam' & pꝛed' R. C. sicut, &c.

Et pꝛed' R. C. dic' qđ p aliqua palleat' bꝛebe pꝛedia' cassari minime debet quia dic' quod bꝛebe pꝛed' bon' & sufficiens

ciens in lege existit ad pzed' E. M. ad
pda' hzeve respondere compellend' quod
quidem hze idem R. parat' est verificare
pout Cur', &c. Unde pet' Judic' & quod
hze suum pzed' satis bon' adjudicetur,
&c. [Sed quia Cur', &c.]

Note, In the Queen's-Bench the Continu-
ance of the Joinder is after this Manner :

Continuance of a Joinder in Demurrer.

ET quia Cur' [or, sed quia Cur'] die' Continuance
Dñe Rñe hic de iudicio suo de &
sup pmissis reddend' nondum advisatur
dies inde dat' est partibus pzed' coram
Dña Rña apud Westm usq; diem —
pr' post — de iudicio suo de & super
pmissis audiend' Et qd' Cur' die Dñe Rñe
hic inde nondum, &c.

And the Form of the Common-Pleas runs
thus: Et quia Justic' hic se advisare vo-
lunt de & sup pmissis priusq; iudic' in-
de reddant dies dat' est partibus pzed'
hic in Octab' Sed Hillarii de audiend'
inde iudicio suo eo qd' iidem Justic' hic
inde nondum, &c.

See some Precedents of Demurrers, with
the Continuances and Judgments thereon, in
the First Part of *Instruct. Cleric.* from fol. 225,
to 237.

3. Demurrer al' *Mise del Rent* versus
M. M. L. B. R. W. J. H. J. B.
Vid. Rast. Ent. fol 79, &c.

Et pzed' *J. B.* dic' quod ipse ac pzed'
M. L. R. & J. H. sunt Tenentes ut
 de libo tenito de pzed. 30 Acr' terre cum
 pertin' *Abbat* hoc qd' hete seu die impe-
 tracon' h'is pzedic' habebatur aliquis
 perceptoꝝ reddit' pzed' in die' queralia spe-
 cificat' noiat' in brevi pō Et quoad ali-
 quem reddit' exeun' de eo qd' sibi p'inet
 de eisdem 30 Acr' dic' qd' *Misa* inde int'
 ipsum & p'fat' *Abbat* fieri non debet quia
 dic' quod materia hujus *Mise* spec' non
 est sufficiens in lege ad ponend' ipsum
J. B. respond' p'fat' *Abbat* super eadem
 Unde nō intend' qd' pō *Abbas* per ean-
 dem Querelam *Misam* suam pzed' ma-
 nutenere potest Unde pet' judic' Et quod
 idem *Abbas* ab *Misa* sua pō vers' eum
 habend' p'cludatur.

Et pzed' *Abbas* ex quo ipse sufficiens
 Querelam vers' pō' *J. B.* & pzed' *M. L.*
R. & J. H. superius fecit ad quam
 idem *J. B.* sufficien' in lege non re-
 spond' pet' judicium & qd' procedatur in-
 de vers' eum ad cap'ionem *Mise*, &c. Et
 quoad pō p'litum pō *M. L. R. & J. H.*
 idem *Abbas* dic' qd', &c. (And so he pre-
 scribes for a Title to the Rent, &c.) Et pet'
Misam &c.

Den^o Miss sur le Title, and Demurrer upon the Title.

Et p^o I. per' q^o sup titlo p^o capiatur
 Amisa Et p^o Abbas silit' Ideo su-
 per titlo. It' ini' eos capiatur amisa Et
 p^o R. W. dic' q^o ipse necesse non het ne
 p' Regem terre tenetur p^oat' Abbati su-
 per titlo p^o respondere Unde per' judi-
 cium Et q^o p^o Abbas ab amisa sua p^o
 vers' eum hend' pcludatur, &c.

4. Demurrer al Audita Querela. Vide
 Rob. Ent. 155.

Et super hoc p^o J. H. defend' vim &
 injur' quando, &c. Et dic' q^o h^oe &
 Narr' p^o minus sufficien' in lege exi-
 stunt ad ip'm J. H. ab execucone Judi-
 cii p^o vers' p^oat' C. H. hend' psequend'
 repellend' sive retardan' Qd'q' ipse ad
 h^oebe & Narr' ill' modo & forma p^o fac'
 & declarat' necesse non het nec per Re-
 gem Terre tenetur respondere Et hoc
 parat' est verificare unde p' defc^o suffi-
 cien' h^ois & narraconis in hac parte
 idem J. per' judic' & execucon debi &
 dampnon p^oia' virtute Judicii p^oia'
 sibi adjudicari, &c.

Et pred' C. H. ex quo ip'e sufficien'
 materiam in Rege ad p^oat' J. H. ab
 execucone judicii pred' vers' ip'm C. H.
 hend' & psequend' repellend' in h^oi & narr'
 suis p^oia' supius allegabit, quam qui-
 dem materiam p^oia' J. H. non deduc'
 L nec

nec ad eam aliqualit' respond', sed verifi-
 cacon ill' admittere omnin' recusat pet-
 judic' & qđ ipse virtute script' relaxacon'
 p'dia' a quacunq; execucone racōne Ju-
 dicii p'dia' vers' eum pro p'fat' J. H. ut
 p'fertur reddit' exoncretur, &c. Et quia
 Justic' hic se advisare volunt, &c.

It appears this *Audita Querela* was
 brought where three were bound to one, and
 the Obligee released to one, and afterwards
 impleaded another, who suffer'd Judgment by
Non sum informatus, afterwards the Re-
 lease came to his Hands against whom the
 Judgment was had, and he brought the *Au-
 dita Querela*: It is also further observ'd,
 that this Matter was not adjudged, but the
 Parties agreed; for the Plaintiff in the *Audi-
 ta Querela* doubted his Cause, because the
 Release was made before the Judgment was
 against him, and the Defendant likewise
 doubted, because the Release was made to ano-
 ther and not to the Plaintiff, and for that the
 Plaintiff was ignorant thereof, the Justices also
 did seem rather to approve of the *Audita
 Querela*, because the Plaintiff was not know-
 ing of the Release.

See Demurrer to an *Audita Querela* up-
 on a temporary Release after Judgment, *Bro.
 Red. 124, &c. Simile, Bro. Met. Nov. 65.*

See the like to an *Audita Querela* upon
 cogn' *Accōnem p durie Imprisonament'*,
Vidian. Entr. 110.

See the like with special Causes upon an
Audita Querela, and a Recognizance
 thereon. Upon Suggestion of a Release,
 where the Defendant was Surety for the Plain-
 tiff

tiff upon a Bond for Performance of Covenants, the Causes were, *Co qd p'dict' C. D. non p'fert hic in Cur' Script' Relaxat' in Parr' p'edict' sup'ius spec' quod ipse per Regem Terre p'ferre debuit. Idem Bro' Met. 70.*

The like to an *Audita Querela* in Banco R. brought by the Defendant in *Cur' de Cod' Banc'*, and his Bail. 2 *Brown. Ent. 50.*

The like to an *Audita Querela* by the Sureties upon a voluntary Escape of the Principal *Co. Ent. 86. And 5 Co. 86. Blomfield's Case*, it's said that the said Writ of *Audita Querela* lies not for the Surety, for tho' the Plaintiff in the Action may have an Action upon the Escape against the Sheriff, yet until it be satisfied the Surety may not have *Audita Querela*, because the Execution of the Body is no Satisfaction for the Debt.

The like to an *Audita Querela* upon a Judgment in Case in *Banco Regis* brought by the Heir and Tertenants, where the Defendant in the Judgment had paid the Moneys recovered in his Life.

The Plaintiff joins in Demurrer, and prays a Superfedeas of the Execution, Judgment given for the Plaintiff and Superfedeas awarded. *Thef. Brev. 30. 31.*

5. Demurrer at Parr' in Case.

ET modo ad hunc diem, &c. coram In Banco Regis
 Pro Rege apud Westm' veni tam
 p'ed' J. C. & R. N. p' Attorn' suum p'edict'
 qm p'edict' J. N. p' H. N. Attorn' suum
 Et idem J. N. defend' him & injur'
 L 2 quando,

quando, &c. Et per judic' de Parr' qđ quia dic' qđ Parr' pđia' materiaq; in eadem content' minus sufficien' in Lege existit ad actionem ip'orū J. C. & R. H. pđia' vers' ip'm J. I. hend' manutenendū ad quem idem J. I. necesse non het nec p Legem terre tenetur aliquo modo respondere Et hoc parat' est verificare Unde pro defectu sufficien' Parr' in hac parte idem J. I. per judic' de Parr' ill' Et qđ Parr' ill' cassetur, &c.

Et pđia' J. C. & R. H. dic' qđ p aliqua p̄allegat Parr' ip'orū J. C. & R. H. cassari minime debet quia dic' qđ Parr' pđia' necnon materia in eadem content' bonū & suffic' in Lege existit ad pđia' accōd ip̄orum J. C. & R. vers' ip̄m J. I. manutenend' quam quidem Parr' materiamq; in eadem content' iidem R. C. & J. H. parat' sunt verificare ac p̄bare p̄ut Cur', &c. Et quia idem J. I. ad Parr' ill' non respond' nec ill' hucusq; aliquialiter dedic' iidem J. & R. H. per' judic' & dampna sua accōd p̄missorum sibi adjudicari, &c. Et quia Cur', &c. Vide 2 Saund. 114.

The chief Cause of this Demurrer was, for that both the Plaintiffs had join'd in one Action, tho' they had several Interests, and prescribed for the Defendant to grind all Corn & Multure ad Molendina pđia' vel eorum unum: The Joinder in the Action was allow'd, and also the Prescription as laid; but it was then said by the Justices, 1. That it ought to have been better alledged, viz. That the Tenants of the Manor ought to grind

grind ad Molendinum p̄dia' seu eorum unum, viz. all the Multure which was not ground at the Plaintiff C. his Mill, to be ground at the Mills of the Plaintiff H. and all Grist, which was not ground at the Plaintiff H. his Mills, to be ground at the Mills of the Plaintiff C. 2^{dly}, That the Prescription was too general, that the Defendant ought to grind all Corn and Grain spent in his House, for then he could not feed any Pullen or Cattle, &c. if so be it was not ground, which was unreasonable; and for those Two Exceptions, the Plaintiff's Counsel pray'd Judgment for the Defendant, because they intended to bring a new Action, and amend those Faults.

Demurrer at Parr' in Case in Cod Banco.

ff. **E**t p̄dia' A. B. p̄ C. D. Attorn suum veni & defend' vim & iniur quando, &c. Et dic' qđ Parr' p̄dia' materiaq; in eadem content' minus sufficiend' in Rege existunt ad p̄dia' C. f. accōnem suam p̄dia' vers' ip'm A. B. hendi manutenend' ad quam quidem Parr' modo & forma p̄dia' fac' & declarat idem A. necesse non het nec per Regem terre tenetur respondere Et hoc parat' est verificare Unde p̄ defectū sufficiend' Parr' idem A. pet' iudic' Et qđ p̄dia' C. f. ab accōn sua p̄dia' vers' ip'm C. hendi p̄cludatur, &c.

Et p̄dia' C. f. ex quo ip'e sufficiend' materiam in Rege ad accōnem suam p̄dia' vers' p̄fat' A. B. hendi manutenend' su-

pius declarabit quam ipse parat' est verificare, quam quidem materiam p'dicta' N. non debet nec ad eam aliquammodo respondere sed verificationem illam admittere omnino recusabit, idem E. per iudicem & dampna sua occasione Promissorum sibi adjudicari, &c. Et quia Iusticiarius, &c.

Vide Co. Ent. 23. Winch. Ent. 28, 31, 73, 76.

3 Le. 130.

See 2 Ven. 66, 70. Demurr. al Narr. in Case.

Upon an Action on the Case against a Sheriff for an Escape and false Return of a *Cepi corpus & paratum habeo*, to which the Sheriff demurred. Resolved by the Court that Judgment should be given for the Plaintiff, because the Defendant had not pleaded the Stat. 23 H. 6. cap. 10 for letting Prisoners at large upon reasonable Security, and shewn the Matter of Fact; for the Court agreed it to be a private Statute, of which they would take no Notice if it was not pleaded. 2 Saund. 152 155.

Demurrer al Narr in Covenant.

Et p'dicta' C. & R. per J. W. Attorn suum v'ro & defend' vim & injur quando, &c. Et die q'd Narr p'dicta' modo & forma p'dicta' fact' ac materia in eadem content' minus sufficien' in Rege existit ad p'dicta' W. Accor' suam p'dicta' vers' eos hend' manutenend' Quodq; ip'i ad Narr ill' modo & forma p'dicta' fact' necesse non hent nec p' Regem terre tenentur respond' Et hoc parat' sunt verificare Unde p' defend' sufficien' Narr ip'ius W. in hac parte

parte iidem *C. & R.* per iudic' & quod
p'dic' *M.* ab Actione sua p'dic' vers' eos
hend' peludatur, &c.

Et p'd *M.* ex quo ip'e sufficien' mate-
riam in Lege ad ip'm *M.* Actionem suam
p'd vers' p'fat *C. & R.* hend' manutenend'
quam ip'e parat' est verificare quam qui-
dem materiam p'd *C. & R.* non dedic'
nec ad eam aliqualit' respond' sed verifi-
cacion' ill' admittere o'io recusat idem *M.*
per iudic' & dampna sua occo'ne p'miss'
sibi adjudicari, &c. Vid. *Winch. Ent. 115.*
simile *Winch. Ent. 119.* and concludes, per'
iudic' & dampna sua occo'ne fraccon' *Con-*
vencon' p'd sibi adjudicari, &c. the like
Idem 120, 132, 159. Vide 2 Ven. 55. Co. Ent.
114. Rast. 137.

Alit' scdm 2 Saund 366. post *Oper del*
Indent' Quibus *leis & auditis* p'dic'
C. f. per Iudic' de *Parr* p'd quia dic'
qd' *Parr* p'd materiaq' in eadem contene'
minus sufficien' in lege exist' ad *Actionem*
ipsius *C. S.* p'd vers' ip'm *C. f.* hend'
manutenend' ad quam idem *C. f.* necesse
non het nec p' legem terre tenetur aliqua
modo respond' Unde p' defectu sufficien'
Narracon' in hac parte idem *C. f.* per
iudic' de *Parr* p'red' Et p'd' *Parr* ill' casse-
tur, &c.

Et p'red' *C. S.* dic' qd' p' aliqua p'red' *C.*
f. supius p'litando allegat *Parr* ipsius
C. S. p'red' cassari minime debet quia dic'
qd' *Parr* p'red' materiaq' in eadem content'
bon' & sufficien' in Lege existunt ad
Action' ipsius *C. S.* p'red' inde vers' p'red'
C. f. hend' manutenend' quam quidem

Par materiamq; in eadem content idem *C. S.* parat' est verificare & probare put *Cur' &c.* Et quia p*ro* *C. S.* ad *Par* p*re*di non respond*et* nec ill*is* hucusq; aliqualit' dedic' idem *C. S.* pet' iudic' & dampna sua oc*cu*sione p*ro*di*ct*' Conven*ti*onis fract' sibi adjudicari, &c. Sed quia *Cur' &c.*

In this Case it was adjudged, that Whereby the Grant of a Reversion, the Rent reserved upon a Lease for Years is well transferred to the Grantee, the Law also transfers to him the Covenant of the Lessee for the Payment thereof as incident to the Rent.

See also Demurrer to a *Par* in Covenant, 2 *Saund.* 164, and there it is pet' iudic' & dampna sua oc*cu*sione p*ro*mi*ss*' p*ro*di*ct*' sibi adjudicari, &c.

This Action was against Executors for a Heriot due upon the Death of their Testator; and the Chief Cause of Demurrer was, that it was not shewn in the Declaration, that the Term granted to the Testator was commenced at the Time of his Death, by the Death of one *S. C.* or otherwise. Three Justices were for the Defendant. that the 3*l.* reserved for a Heriot was of the same Nature with a Rent which is to be paid during the Term, and not before the Commencement of the Term, not after the End thereof; and here this Reservation should be construed most strongly against the Reserver, as in *Dyer* 377. *a.* and it seemed to them that the Heriot for which the Plaintiff had brought his Action, was not due or payable by the true Intention of the Parties, because the Death of the Testator was before the Commencement of the Term, wherefore they concluded for the Defendant,

fendant, that the Plaintiff should be barred. The Chief Justice was for the Plaintiff, and delivered his Opinion; wherefore it was clear to him that the Heriot in Question should be paid upon the Death of the Testator, happened it at any Time whatever, either before the Commencement, or after the End of the Term: But notwithstanding it was adjudged for the Defendant by the other Three Justices, That the Heriot was of the Nature of a Rent and not payable by the Executors, and that a Heriot should go with a Reversion as well as a Rent, and also that the Grantee of the Reversion should have it.

Vide Demurrer al Narr. in Coven. 1 Saund. 109. Et vide 112. where 'tis held, that altho' the Breach of the Covenant of the Testator be by the proper Default of the Executor, yet Judgment ought to be *de bonis Testatoris*, and that a Judgement against an Executor ought not to be *de bonis Testatoris* if he be not named Executor: And it is made a *Quære*, If it shall be sufficient to declare against him as Executor, without naming him Executor in the Beginning of the Declaration. But the Reporter is of Opinion, that the Declaration being by Bill was good enough, for upon the whole Matter the Plaintiffs had declared against the Defendant as Executor, altho' in the Beginning he is not named Executor, which, is only Form, and that the Plaintiffs might have Judgment for Damages *de bonis Testatoris* upon the Declaration well enough, but it was not moved. Also that there was another Exception lay to the Declaration, *viz.* That a *Que* Estate could not be pleaded of a Term. *Cro. 25. Eliz. 22.*

7. Demurrer al' Narr in de'bo in Banco
Reg.

Et modo, (Ec.) Et idem W. H. defendit
vim et injur' quando, Ec. Et dic' qd
p'dia' C. acc'on' suam p'dia' inde vers'
eum here seu manutenere non debet,
Quia dic' qd Narraco p'dia' materiaq;
in eadem content' minus sufficiend' in
Rege existunt ad acc'on' p'dia' C. p'dia'
inde vers' ip'm W. H. hend' manutenend'
ad quam quidem Narr' ip'e idem W.
necesse non het nec p' Regem terre tene-
tur aliquo modo respondere, Et hoc pa-
rat' est verificare, Unde p' defectu suffi-
ciend' Narr' in hac parte ip'e idem W. H.
pet' judic', Et qd p'dia' C. ab acc'one sua
p'dia' inde vers' ip'm W. hend' pcluda-
tur, Ec.

Et p'dia' C. dic' qd ip'e p' aliqua p'
p'dia' W. H. sup'ius p'litando allegat'
ab acc'one sua p'dia' inde vers' ip'm
W. H. hend' pcludi non debet quia dic'
qd Narr' p'dia' materiaq; in eadem con-
tent' bon' et suffic' in Rege existunt ad
acc'onem ip'ius C. p'dia' inde vers' p're-
dia' W. H. hend' manutenend' quam qui-
dem Narraconem materiaq; in eadem
content' ip'e idem C. parat' est verifi-
care et p'bare put' Cur', Ec. Et quia
p'dia' W. H. ad Narr' ill' non respond'
nec ill' hucusq; aliqualit' dedic' idem C.
pet' judic' et debum suu' p'dia' unacum
dampnis suis occ'one detenc'on' Debi ill'
sibi adjudicari, Ec. Sed quia Cur' Ec.
2 Saund. 128, &c. This

This was an Action of Debt upon an Arbitrament; and upon the Argument agreed, That if a Submission be to Arbitrators, and that if they disagree, then to an Umpire, and the Award and Umpirage are limited to the same Day, there the Power of the Umpire is void, unless that the Arbitrators have disagreed, and declared that they will no more intermeddle. *Idem* 130, 132.

That if a Submission be to arbitrators, so that they make their Award to Morrow, and if they cannot agree, then to an Umpire, so that he makes his Umpirage to Morrow, or the next Day, in this Case the Umpire cannot make his Umpirage on the morrow. *Idem* 130, 131.

Vide eundem 133. Where Arbitrators within the Time limited may choose an Umpire, to make an Umpirage after the Time for their Award is determined.

In Debt after Oyer of two several Sheriffs Bonds, the Defendant demurred to the Declaration; and upon the Argument it appeared that three Persons were jointly bound, and the Plaintiff declared against the Defendant singly: But it was answered, that it did not appear the other Persons had sealed the Bonds, and if not, then their Bonds were single, and if they had sealed, then the Defendant should have pleaded in Abatement, that the other two Persons had sealed, and were living, and so to pray Judgment of the Bill; and the Court was of the same Opinion. *Vide* 1 Saund 390.

Demurrer at Barr' in Debo in Cod Banc.

Et p̄dix' C. p̄ R. V. Attor̄d suum ven̄
 & defend' vim & injur' quando, &c.
 Et dic' qđ Barr' p̄dix' materiā n̄ ea-
 dem content' minus sufficien' in lege
 exist' ad ip'm C. accōn' suā p̄dix' vers'
 ip'm Def' hend' manutenendū Quodq̄
 ipsa ad Barr' p̄dix' modo & forma p̄dix'
 fac' necesse non het nec p̄ Legem terre
 tenetur respondere, Et hoc parat' est
 verificare, Unde per' judic' de Barr' p̄e-
 dia' &c.

Et p̄dix' C. ex quo ip'e sufficien' ma-
 teriam in lege Barr' p̄dix' ad accōn'
 suam p̄dix' vers' p̄fat' C. hend' manute-
 nendū supius narrando allegabit quam
 ip'e parat' est verificare, quam quidem
 materiam p̄dix' Def' non dedic' nec ad
 eam aliqualiē respondi sed verificacōn' ill'
 admittere oīo recusat idem C. per' judi-
 cium & deba sua p̄dix' necnon dampna
 sua occōne detencon' debor̄ ill' sibi adju-
 dicari, &c. Vide Lev. Ent. 53.

The Action was, Debt against an Admini-
 strator, and declared in the **Detinet** upon a
 Demise to the Intestate for 129 l. due in the
 Intestate's Life-time, and for 64 l. in his own
 Time in the **Debet & Detinet**: The Defen-
 dant demurs, and adjudged that the Action
 did not lie to charge him in the **Detinet** for
 Part, and **Debet & Detinet** for other Part,
 which require several Judgments, *scilicet de bo-
 nis pp̄* for the Arrears in his own Time
 and

and *de bonis Intestat'* for the Arrears due before his Death; and that the severing the said Sums in the Declaration is not sufficient, but he ought to have several Actions. *Vide* 3 *Lev.* 74.

The like Demurrer to a Declaration of Debt for an Amerciament in a Court-Leet, wherein it is shewn that the Defendant was present and amerced *Quod quidem Amerciament' afferat' fuit p omnes Jur* ad 40 s. And the Court held the Declaration ill; First, Because it was not shewn to what Sum the Amercement was made, though some Precedents are so, as *Rast.* 553. a. & b. 109. b.

Secondly, The Afferement ought to have been by Officers elected by the Sheriff, and not by the Jury, and they have a special Oath for that Purpose, as *Hob.* 129. *Wilson vers' Hardingham* in both Points, whereupon Judgment was given for the Defendant. 3 *Lev.* 206 *Vide Demurrer al Nar in Debt. Rast. Ent.* 187, 321. *Aston.* 96, 157. *Winch. Ent.* 186, 304. *Thompson.* 207. *Clift.* 288, 290

8. Demurrer al Narr' in Formedon.

AS to Parcel, the Defendant pleads *Non feoffabit*; and as to the Residue, demurs by *Infra etatem, Et pet' qd loquela p'dia' remaneat usq' plenam etatem.* *Clift.* 361.

Aliter secundm' Aston. Ent. 403. als' 335.

After a Special Imparlance, *Usq' in Oatib Mich — Ad quem diem hic veni tam p'dia'*

pdia' J. qm̄ pdia' H. p. Alton' suos
 pdia' & super hoc idem H. dic qđ Parr'
 pdia' & materia in eadem content' mi-
 nus sufficien' in Lege existunt ad pdia'
 J. accōnem suam pdia' vers' eum hend'
 manutenend', Qđq; ipse ad Parr' ill'
 modo & forma pdia' fact' necesse non het
 nec p. Legem terre tenetur respondere,
 Et hoc parat' est verificare, Unde p. de-
 fectu sufficien' Narracōis in hac parte
 idem H. pet' judic' & qđ pdia' J. ab
 accōne sua pdia' hend' p̄cludatur, &c.

Et pdia' J. ex quo ipsa sufficien' ma-
 teriam in Lege ad Actiō' suam pdia'
 vers' p̄fat' H. hend' manutenend' supius
 declarabit quam ipsa parat' est verifi-
 care, quam quidem materiam pdia' H.
 non dedic' nec' ad eam aliqualit' respondi
 sed verificacō' ill' admittere omnino re-
 cusat pet' judic' & seisinam Cēntōr.
 pdia' eum p̄m̄ sibi adjudicari, &c. See
 Coke's Entr. 335, &c.

9. Demurrer at Parr' sur Hutes' & Cland
 scdm, 2 Saund. 377, &c.

TH E Plaintiff declares upon a Robbery
 of 29 l. — 10 s. of his own Proper Mo-
 ney and for other Goods in his possession to
 to the Value of 39 l. — 19 s. — 9 d. but did not
 shew the Particulars of the Goods, nor that
 they were his own. Defendants demur.

Et pdia' homines inhabitant' in Hun-
 dredo de C. p. J. L. Alton' suum ven'
 & defend' vim & injur' quando, &c. Et
 pet'

pet' judic' de Narr' ipsius C. predicta',
 Quia dic' qd' narr' predicta' materiaq' in
 eadem content' minus sufficien' in Lege
 existit ad prefat' C. ad Actionem suam
 predicta' inde vers' ipsos homines inhitan'
 in Hundr' predicta' & qd' necesse non h'ent
 nec p' Legem terre tenentur aliquo modo
 respondere, Et hoc parat' sunt verificare
 unde pro defectu sufficien' Narr' in hac
 parte iidem homines inhitan' in Hundr'
 predicta' pet' judic' de Narr' ill', Et qd'
 Narr' ill' cassetur, &c.

Et predicta' C. dic' pd' p' aliqua per predicta'
 homines inhitan' in Hundr' predicta' supius
 allegat' Narr' ipsius C. predicta' cassari in-
 nime debet, quia dic' qd' Narr' predicta'
 materiaq' in eadem content' bon' & suf-
 ficien' in Lege existit ad ipsum C. ad
 Actionem suam predicta' inde vers' prefat'
 homines inhitan' in Hundr' predicta' hendi
 manutenend' quam quidem Narr' mate-
 riamq' in eadem content' idem C. pa-
 rat' est verificare & probare prout Cur. &c.
 Et quia predicta' homines inhitan' in
 Hundr' predicta' ad Narr' ill' non respond'
 nec illud hucusq' aliquo modo dedic' idem
 C. pet' judic' & dampn' sua occon' pre-
 missor' predicta' sibi adjudicari, &c. Sed
 quia Cur', &c.

Upon this Demurrer to the whole Declara-
 tion, the Plaintiff remitted all Damages for
 the Goods, and it was held that the Declara-
 tion was insufficient as to that Part, and that
 the Owner ought to have an Action; yet the
 Declaration was held good as to the Money,
 and

and for what was therein well laid, and the Plaintiff had Judgment as to the Money. And it is also observed, that the Plaintiff being a common Carrier was responsible for the Goods to the Owner, and might well maintain an Action for the Robbery of them, if he had laid his Declaration right.

10. Demurrer al' Infor'macon'.

THese Demurrers run by way of Protestation and Plea over. The Defendants pray Oyer of the Information, Et eis legitur, qua lecta audita & p ipsos W. L. & J. C. intellecta queruntur se coloꝛe pꝛemiss' grabit verat foꝛe & inquietat & hoc minus iuste, Quia protestando qđ Infor'maço pꝛedict' ac materia in eadem contene minus sufficien' in Lege existit ad qđ ipsi necesse non hent nec p Legem terre tenentur respondere, Protestando etiam pđ ipsi W. L. & J. C. vi & armis, &c. in & super Possessionem deced' Dñi Rñe nunc pꝛemissoz in Infor'macon' pꝛedict' spec' non intraver' intruser' & ingressum fecer ac exit' & pñcia inde in usum suu pꝛopꝛ' pꝛecepꝛ' & huer' & trañs ill' p totum tempus pꝛdicta' continuaver in contempt' diae Domine Regine nunc ac contra Leges suas pꝛout p Infor'macon' pđ supius fieri supponitur pro pꝛito tamen iidem W. L. & J. C. die Qđ &c. and so justify. Vide Co. Ent. 376. Simile idem 290. Pro pꝛito non Cul, Simile & non Cul, idem 395. Simile Rast. Ent. 409. b. 410. b. 412. b.

11. De-

11. Demurrer al Monstrance de Droit.

THIS Demurrer is also by Way of Protestation, as is above upon the Inquisition, Quia prestando qd' Inquisitio pred' ac matia in eadem content' minus sufficien' in Lege existit, (Ec.) p p'tito tamen, (Ec.) and so set forth their Right and Title. *Vide Co. Ent. 403, &c.*

12. Demurrer in Prohibicione.

EC modo ad hunc diem, (Ec.) Et idem W. C. defend' vim & injur' quand', Ec. & omnem contempt', Ec. & quicquid, Ec. Et dic' quod' ipse non est p'scui' in p'd' Cur' Christian' contra phibicionem regiam ei inde direct' put predia' H. C. qui tam, Ec. p Narr suam pred' superius suppon', Et de hoc pon' se sup Patr', Et p'dia' H. C. inde s'ficer, Ec. Sed pro Consultatione in hac parte hend' ideam W. C. dic' qd' Narraco predia' modo & forma pred' fact' & declarat' matiam in eadem content' minus sufficien' in Lege existit ad ipsu' W. C. a Decimis pred' in pred' Cur' Christian' vers' p'fat' H. C. petit' hend' pcludend' qd' ipse ad Narr illi modo & forma predia' fact' & declarat' necesse non het nec p Legem terre tenetur aliquo modo respondere, Et hoc parat' est verificare, Unde pro defectu sufficien' Narracon' pred' H. C. qui tam, Ec. in hac parte idem W. C.

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per

pet' iudicium & hęc Dñi Reg' de Consultacon sibi in hac parte concedi, &c.

Et pzed' H. C. quoad pzed' plitum pzed' W. C. quoad hęc Dñi Reg' de consultacon hend' supius plitat' ex quo ipse sufficiens matiam in lege ad pzedic' W. C. a Decimis pzed' p ipsum W. C. in Cur' Christianitat' pzed' vers' pzetar' H. C. pet' hend' pcludend' supius allegabit quam ipse parat' est verificare quam quidem matiam pzed' W. C. non dedic' nec ad eam aliqualit' respond' sed verificatione ill' admittere omnino recusabit pet' iudic' & quod pzedic' W. C. nullum heat hęc de Consultacon', &c. Et quia Cur', &c. Vide i Saund. 140.

The chief cause of Demurrer was, because the Plaintiff did not alledge that the Corn fenced in with the Underwood was his own Corn. The Plaintiff's Council said, It was no Matter whose Corn, being the Rector was to have the Benefit of Tithe: But the Court held the Prescription ill, for that the Plaintiff could not give away his Wood to any other for inclosing of Corn without paying Tithe, and so a Consultation was awarded.

Simile Co. Ent. 460. Winch. Ent. 561. alias 595, 564. alias 598, 571. alias 605, 608. alias 612.

13. Demurrer in Quare Impedit.

THE Bishop claims nothing but as Ordinary; Defendant R. H. claims the Advowson by Will; M. H. pleads, and the Incumbent demurs to the Declaration. *Lev. Ent.* 139, 140.

Et predict' R. H. dic' quod Parr' predict' materie in eadem content' minus sufficien' in Rege existit ad predict' Eliz. Action' suam predict' vers' ipsum R. Hend' & manutenend', Quod ipse ad Parr' predict' in forma predict' fac' & declarat' necesse non habet nec p' Legem terre tenetur respondere, Et hoc parat' est verificare, Unde p' defectu sufficien' Parr' in hac parte idem R. H. pet' Judic', Et quod predict' E. modo querens ab Actione sua predict' vers' ipsum Hend' pcludatur, &c.

Judgment against the Ordinary, (&c.) Joinder in Demurrer to the Incumbent.

Et predict' E. modo quer' ex quo ipsa sufficien' materiam in Rege in Parr' sua p'd' ad ipsam Eliz. ad Action' suam predict' vers' p'd' R. H. Hend' manutenend' sup'ius declarabit quam ipsa parat' est verificare quam quidem materiam predict' R. H. non dedic' nec ad eam aliquatenus respond' sed verification' ill' admittere oio recusat pet' Judic' & breve Epo unacum dampnis, &c. ubi adjudicari, &c. Et quia Justic', &c. Vide *Lev. Ent.* 140.

Upon this Demurrer it was adjudged, that the same Person being Patron and Parson dying, the Heir, not the Executor shall present. *Vide 3 Lev. Rep. 47.*

And Note, That 3 *Lev. 59.* the Plaintiff shall not recover Damages where he recovers his Presentation, although the Six Months are past. *Vide Lev. Rep. 435, &c. Et vide Co. Ent. 493, & 494.*

14. Demurrer al Scire fac.

Ecce p[re]d' les Pledges crabe Oper de Count & Demurr' al Scire fac, Quibus etiam itis & auditis iidem H. & D. dic' qd' p[re]dia' b[re]ve de Scire fac sup[er]ius mencionat' mat[er]iaq[ue] in eodem content' minus sufficien' in Rege existit ad ipsos H. & D. cum p[re]d' 240 l. in bagis p[re]dia' content' de denar' suis p[ro]p[ri]o onerand', &c. Et pet' qd' h[ic] de Scire fac p[re]d' vers' eos cassetur, &c. Et p[re]dict' f. dic' qd' p[re]dia' h[ic] de Scire fac sup[er]ius mencionat' mat[er]iaq[ue] in eodem content' bon' & sufficien' in Rege existunt ad ipsos H. & D. cum p[re]d' 240 l. in bagis p[re]d' content' de denar' p[ro]p[ri]o ipsorum H. & D. onerand' quod quidem b[re]ve mat[er]iamq[ue] in eodem content' idem f. D. parat' est verificare & p[ro]bare put Cur' &c. Et quia p[re]d' H. & D. ad h[ic] ill non respond' nec ill hucusque aliquant' deduc' idem f. ut prius pet' iudic' & execution' vers' bon' & casual' p[re]d' H. & D. ad valens 240 l. plac' J. C. replegiat & delibat'

delibet, Et quia Cur, &c. Et Iudic p
quer. Vide Theſ. Brev. 277. Simile idem
269. cum cauſis.

Miter ſcđm 2 Saund' 341, &c.

ET idem H. dic qđ hęc de Scire fac
modo & forma pđicta Cur' hic im-
petrat' & pſecut' ac materia in eadem
content' minus ſuffic' in Lege exiſtit ad
ipſos M. R. H. & P. executionem ſuam
pđict' de pđict' 160 l. verſ' eundem H.
hēd' manutēend', Quod ipſe ad hęc de
de Scire fac' ill' modo & forma pſed'
fac' neceſſe non habet nec p Regem terre
tenetur reſpondere, Unde pet' iudic' de
hęc de Scire fac' pſed', Et quod pſed'
M. R. H. & P. ab Execution' ſua pſed'
verſ' eum hēd' pcludantur, &c.

Et pſed' M. R. H. & P. ex quo ipſi
ſufficien' materiam in Lege in hęc
pſed' ſuperius allegaver' ad execution'
ſuam pſed' verſ' pſed' H. de pſed' 160 l.
in forma pſed' hēd' quam ipſi parat'
ſunt verificare quam quidem materiam
pſed' H. non dedie nec ad eam aliqua-
liter reſpond' ſed verification' ill' admit-
tere oīo recuſat ut prius pet' iudic' &
Execution' ſuam pđict' de pđict' 160 l.
verſus eund' H. ſibi adjudicari, &c. Et
quia Juſtic', &c. Et Iudic p Quer.

Treſpaſs.

15. Demurrer in Trañs ſuper Caſum:
(Vide ante Demurrer al' Parr' in Caſe.)

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16. De-

16. Demurrer ad Narr in Warrantia
Charte secundum Co. Ent. 692. post Oper
del faire.

Quo lecto audito idem H. Dom' M.
dic' qu' Narr p'ced' in forma p'edia'
fact' & declarat' ac materia in eadem con-
tente' & p'ced' Scriptum Relaxation' in
forma p'ced' fact' minus sufficien' in Lege
existit ad ipsum H. H. Action' suam
p'dia' ad ipsum H. Dom' M. henc' manu-
tenend', Unde ipse ad Narr p'ced' in for-
ma p'ced' fact' & declarat' necesse non hec
nec p' Legem terre tenetur respondere,
Et hoc parat' est verificare, Unde p' de-
fend' sufficien' Narr' p'edia' H. H. in hac
parte idem H. Dom' M. pet' judic',
Et quod p'edia' H. H. ab Actione sua
p'dia' vers' ipsum H. Dom' M. henc' p'ce-
cludatur, &c.

Et p'dia' H. H. ex quo ipse sufficien'
materiam in Lege ad Action' suam p'ce-
dia' vers' p'fat' H. Dom' M. henc' ma-
nutenend' superius declarabit quam ipse
parat' est verificare, quam quidem ma-
teriam p'dia' H. Dom' M. non deduc'
nec ad eam aliqualit' respond' sed verifi-
cationem ill' admittere oia' recusat ut prius
pet' judic', Et quod p'edia' H. Dom' M.
testa' & coiam' p'ced' cum p'tin' eidem
H. H. Narr, &c. Et quia Justic', &c.
Et Judic' p' Quer'.

17. De-

17. Demurrer al Barr in Waste.

Et pzed' Def' p C. P. Attorn' suum ben' & defend' vim & injur' quando, &c. Et dic' quod hze pzed' & materia in Barr' pzed' content' minus sufficien' in Lege existit ad pzed' Quer' Action' suam pzed' vers' eos hendi manutenend' qd' ipse ad hze & Barr' ille modo & forma pzed' fundat' & fac' necesse non habent nec p Legem terre teneantur respondere, Et hoc parat' sunt verificare, Unde p defend' sufficien' hris & Barr' in hac parte pet' judit' & qd' hze cassetur.

Et pzedia' quer' ex quo hze pzed' sufficiens in Lege ad Actionem suam pzedia' vers' pfar' Def. hendi manutenend' supius declarabit que ipse parat' est verificare que quidem hze & materiam pedia' non dedit' nec ad ea aliquanlter respond' sed verificationem i' l' admittere o'o recusat' pet' judic', Et qd' hze suum p'd bonum adjudicetur ac damna sua occasione vasti pzed' sibi adjudicari, &c. Vide Cl. Aff. 41. & vide Rast. Ent. 695.

Aliter upon Writ and Count, 2 Rastal's

Ent. 147. b.

Et pzed' A. in pp'd p'sona sua ben' & defend' vim & injur' quando, &c. Et dic' qd' materia in hzi & Declar' pzedia' content' non est sufficien' in Lege ad Actionem pzedia' p pzed' B. vers' eundem A. manutenend' nec ad eundem A. ad

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tam respondere ponendū, Et hoc parat' est verificare, &c. Unde per' judic' si idem B. aliquam Actionem in hoc casu manutenere debeat, &c.

Et p'ed' B. ex quo materia in brevi & Dec' p'ed' spec' sufficien' est in Rege ad Action' p'ed' p' eund' B. manutenendū ac eund' A. ad eam responsur' ponendū, Ad quam quidem materiam idem A. nihil respond' pet' judic' & dampna sua sibi in hac parte adjudicari, &c. Et quia Cur', &c.

Vide Demurr' al' Narr' in Waste, 2 Rast. Entr. 695.

*Aliter ad Narr' tantum, Secund' 3 Lev.
Rep. 130. in Case pur Waste.*

Et p'ed' W. p' A. R. Attorn' suum ven' & defend' vim & injur' quando, &c. Et dic' qd' Narr' p'dia' in forma p'ed' fac' & declarat' necnon materia in eadem content' minus sufficien' in Rege existit ad p'ed' S. Action' suam p'ed' vers' ipm W. Hens' seu manutenendū, Quod ipe ad Narr' p'ed' modo & forma p'ed' fac' & declarat' necesse non her nec p' legem Terre tenetur respondere, Et hoc parat' est verificare, Unde p' defend' sufficien' Narr' p'dia' S. in hac parte idem W. pet' judic' & qd' p'ed' S. ab Action' sua p'dia' vers' ipm W. Hens' deludatur, &c.

Et p'ed' S. ex quo ipse sufficien' materiam in Rege ad Actionem suam p'ed' vers' plac' W. Hens' manutenendū superius

rius declarabit quam ipse parat' est
 verificare quam quidem materiam p̄dia'
 M. non debet nec ad eam aliquatenus re-
 spondere sed verification' ill' admittere oīa
 recusabit idem S. per' judic' & dampna
 sua occasione p̄missis sibi adjudicari, &c.
 Et quia Justic', &c.

It is said, that Matter was agreed upon by
 the Parties. *Idem* 132. *Vide le Report.*

Thus far concerning Advantage to be had
 by a General Demurrer to a Declaration.

But it is further to be observed, that a De-
 murrer may be either General, or special.

1. General, without shewing any Cause,
 but that it is insufficient in Law.

2. Special wherein the Party sheweth
 wherein it is not sufficient, and doth not
 ly upon that Point:

And as he that demurreth generally con-
 fesseth all such Matters of Fact as are well
 and sufficiently pleaded to be true ; so he that
 demurs specially, hath waived all other Mat-
 ters of Form, and can take no Advantage of
 any other Matter of Form but what he hath
 spoken of, yet he may take advantage of any
 other Matter of Substance, 10 Co. Rep. 88.
 And commonly the Want of Form is made
 one of the Causes of Demurrer.

Sir Edward Lutwyche in his Entries, Vol. 1.
 fol. 4. upon a Demurrer to a Plea in Abate-
 ment, saith, That for avoiding of an Imper-
 tinent Prolixity, no common General De-
 murrers shall be inserted in his Book, amongst
 which

which he computes all such Demurrers in which the Causes are shewn, as follows, viz. *Quod placitum est repugnans duplex incert & caret forma*, or to that Effect; which Chief Justice *Hale* said, was a Mouse-trap of the Law, and would not allow it as a Special Demurrer: And he adds, that the Statute of Demurrers, 27 *Eliz. cap. 5.* requires that the Cause of Demurrer shall be specially and particularly express'd, agreeable in some Measure to the Practice before this Statute, which was to debate the Matter of Demurrer at the Bar, and sometimes at the Bench, before the Demurrer was enter'd. *Vide 1 Vent. 204.*

Causes of Demurrer.

Sometimes the Causes of Demurrer are placed in the Middle, and sometimes, at the latter End. In the Middle, as thus;

Et pꝛed' B. p E. Attoꝝꝝ suum ven'
& defend' vim & injur' quando &c. Et
dic' qđ Narr' pꝛed' materiaque in eadem
content' minus suffic' in lege existit ad
pꝛed' M. action' suam pꝛed' vers' ipm
B. hẽs' manutenend', Qd̃q; ipse ad
Narr' ill' modo & forma pꝛed' fact' & de-
clarat' necesse non ẽet nec p legem terre
tenetur respondere & pꝛo causis moꝛa-
tionis in lege super Narr' pꝛedia' idem
B. scđm formam Statuti in hujusmodi
casu edit' & pꝛbis ostendit Cur' hic has
Causas sequẽ videt, Co quod J. & J.
non concludunt Narr' suam pꝛdia' aperte
videt,

In the Mid-
dle.

videt, Per quod actio accrebit eidem
 A. & J. ad exigend' & habend' de eod' B.
 predia' 322 l. 13 s. 4 d. in Narr' pred' A.
 & J. superius menconat', &c. Et hoc
 parat' est verificare, Unde p defectu suf-
 ficien' Narr' in hac parte idem B. pet'
 iudic, Et qd' pred' A. & J. ab actione
 sua pred' vers' ipm B. hend' precludan-
 tur, &c.

If the Causes be placed at the latter End,
 then it is only adding at the very End ;

Et p causis moxationis in lege sup
 Narr' ill' idem A. scdm form' Statuti
 in humoi Casu nup edic' & p'bis' ostendit
 Cur' hic has causas sequen' vizt', Co qd'
 p Narr' pred' non apparet quomodo pre-
 dia' E. leisit' fuit de pred' Offic' Ballii
 Franches' in Narr' pred' spec' nec quod
 ius vel titlum idem' E. fuit in eodem
 Offic', Et quod Narr' ill' est incerta in-
 sufficiens & caret forma, &c. Vide Reg.
 Plac. 153. At the End.

Some Special Causes of Demurrer, as set out
 in printed Precedents.

E qd' Quer' non profert hic in Cur' In Audita
 scriptum Relaxationis in Narrat' querela.
 pred' supius spec' qd' ipe per legem terre
 pferre debuit, &c. Bro. Met. 70.

In Case sur Trover.

E p causis moxationis in lege scdm
 formam Statuti demonstrat & Cur'
 hic ostendit has sublequentes videt,
 3 Qd'

Quod predicta J. non monstrabit per Narrationem suam predicta quo die vel anno ipse J. de bonis & catallis predicta possessionat' fuit vel quo die & anno bon' & catall' predicta ad usum ipsius W. debener', ad quod narratio predicta oia incerta & imperfecta existit. Vide Cl. Ass. 235.

Aliter in Case per stopping un Water-Course in Regia Via.

Et per Causis moracionis in lege demonstrat' & Cur' hic ostendit quod predicta R. per Caus' Actionis suis allegat' quod predicta Regie vie in Narratione predicta mentio-
nat' ration' Obstructionis predicta' Aquae sunt adeo superflue ut inhabitant in Mes-
suagiis suis in Regiis viis alii absque maximo periculo accedere seu transire non potuissent, per qua causa nulla particula-
ris persona Actionem suam pro superflui-
one Regie vie here possit, &c. Vide Winch.
Ent. 49.

Aliter in Case sur Bargain de Terr' & Assumption' a faire Estate, secundum Rast.
Ent. 6. b.

Et per B. in proposita persona sua veni, (&c.)
Et per auditum Ville predicta, (&c.)
qua lea' & audita die quod ex qua ma-
teria in billa predicta continet in se quan-
dam Conventionem in quo Casu predicta
A. Action' suam Conventionis & non
deceptionis secundum Legem Angl' in hac
parte impetrasse debuit sicque idem B.
ad

ad materiam in eadem Bill' content'
 necesse non fuit nec tenetur p legem re-
 spondere per' Iudic', Et qđ Villa p'dia'
 cassetur, &c.

Upon Assumpsit to pay the Debt of a
 Third Person.

Quod non apparet p Parr' p'dia' qđ
 est aliquod Memorandum aut pre-
 mius' in Parr' p'd' spec' in Scrip' sig-
 nat' p ipm A. aut aliquam al' person'
 p ipm A. legalit' autorizat' p'out
 debuit scdm form Statut' in huiusmodi
 Casu nup edit' & p'bis', Et quod Parr'
 p'dia' est incert' insufficiens & caret for-
 ma. Vide Reg. Plac. 144.

In Covenant.

Et qđ non apparet in Parr' p'dia' p'd'
 Conventio p'd' in Parr' p'd' supe-
 rius spec' de qua p'd' A. & F. action'
 suam p'd' produxer' & supius narraver'
 est fract' ac etia ab eo qđ Conventio ill'
 in lege se non extendit ad p'd' summam
 120 l. p Parr' p'd' post mortem p'd' E.
 debuit fore supposit' Acetiam p eo qđ in
 Parr' p'd' allegatur qđ ead' summa 20 l.
 debuit fuit & non solut' ad Festum An-
 nunc' bte Marie Virg' pr' sequen' post
 mortem p'dia' E. & qđ eadem E. obiit
 scdo die f. tum pr' p'tie Sicoz p'd' 20 l.
 ad p'd' Festum Annunciation' bte Ma-
 rie non fuer' arretra per spec' dimid' unius
 Anni pr' sequen' post mortem p'dia' E.
 Et hoc, &c. Unde, &c. (ut in al') Co.
 Ent. 115. a. Aliter

Aliter sur Policy de Assurance.

Quod pred' G. non monstravit Cur' hic per Parr' suam pred' quod ipse idem G. tempore confect' Script' assuretur predia' hui' aliquod interesse vel concern' in Nave pd' vel in apparatu suo, vel qd' ipse idem G. tunc hui' aliquam rationabilem causam facere assuretur super eand' navem Et qd' Parr' predia' est duplex incert' & caret forma, &c. Vide Reg. Plac. 143.

That the Breach of Covenant contains a Negative Pregnant.

Quod constat p Parr' predia' qd' reddit pred' virtute Statut' de Usibus in possession' transferend' est translat' ab ipis H. & E. pred' M. C. ac ad ipsam solbisse debuit, Necetiam qd' fractio Convention' pred' continet Negativum pregnans videt' non solution' reddit' pd' pd' H. & E. p usu pred' M. in quo implicitum est quod est solut' pred' H. & E. licet non p usu predia' M. Et hoc, &c. Unde, &c. Vide Bro. Met. Nov. 121.

There must, it's said, be a special Demurrer to a Negative Pregnant, which doth also contain in it an Affirmative, and also to an Argumentative Plea, which concludes nothing directly but only by Way of Argument or Reasoning also to a double Plea; for a General Demurrer doth admit them to be good, for it doth not shew any Fault in them as a Special De-

Demurrer doth. *Vide Reg. Plac. 134, 135. & Pract. Reg. Tit. eundem.*

In Debt.

Et p Causis moration' in lege in hac parte idem H. juxta formam Statut' in humoi Casu edit' & pvis' Cui' hic demonstrat has Causas subsequen' videlt' p eo qd' p'ed' S. in Parr' sua p'ed' non monstravit quomodo nec qualiter p'fat' W. A. fuit possess. de tenet' in Parr' ipsius S. supius mentionat' p quam psonam die Terminus Annoꝝ exceden' triginti annos fuit concess. nec quando incipiebat, ac p eo qd' Parr' ill' est in se repugnans incertum & caret forma, &c. i Lut. 654.

Eo qd' in Scripto non fit mentio de appositione Sigilli, &c. Bro. Red. 258. Vide Co. Ent. 190.

In Formedon.

Eo quod p'ed' H. H. in Parr' sua p'ed' non ostendit seu allegat quod aliquis Donator cepit Exple's Manerii & tenetor' p'ed' per p'ed' H. supius petit' Accetiam eo qd' mors p'fat' A. P. in Parr' p'd' supius mencionat' non allegatur in Parr' ill' Accetiam pro eo qd' in Parr' p'ed' non allegat' qd' de p'fat' W. P. in Parr' p'ed' superius mencionat' revertit' ius, &c. eo qd' ipe obijt sine hered' masculino de corpore suo exeu' sed solummodo qd' de ipso

Will'o

Willo reuertit p formam, &c. Vide
2 Luc. 972, 973.

In Prohibition.

ET pro Causis moracionis in lege iuxta
formam Statuti in humod Casu inde
nup edit' & probis' idem L. Cur' hic de-
monstrat & ostendit qd' Pare pzed' con-
tinet duplicem, multiplicem & insuffi-
cien' materiam, &c. Vide Co. Ent. 457 b.
& vide 2 Co. fol. 49. b. &c.

Sur Scire Facias.

Pro eo quod non apparet p hze pzed'
de ffd fac qd' pzed' H. M. ad ali-
quod tempus huit pzed' 160 l. aut ali-
quem denat inde in manibus suis sive
in manibus aliquor Offic' suor vir-
tute hzis Dñi Reg de ffd fac superius
spee ac pro eo qd' nulla executio vers' pd'
H. M. sup Rectori hzis de Sci' fac in
hzevi de Sci' supius mentionat emanare
debet. Vide 2 Saund. 341.

Upon this Demurrer, Judgment was against
the Sheriff, and confirm'd in Error for return-
ing Seizure of Goods upon a *Fieri Facias* for
200 l. *ad valenc.* 160 l. and that they were res-
cued out of his Officer's Custody, so that he
could not levy the Debt, and that S. had no
other Goods whereon to levy; and it was
also held, that by the Seizure of the Goods in
Execution, the Sheriff had a Property in
them, so that he might reseize them and sell
them,

them, as well when out of his Office as before *Idem* 344.

That where in the Executing of a *Fieri Facias* the Sheriff does not misbehave himself, he shall not be charged in Debt, or upon a *Scire Facias*, if it appears not by the Return that he had Money in his Hands. *Id.* 345.

That where upon a *Fieri Facias* the Sheriff returns, that the Goods seized remains in his Hands *ob defectum emptorum*, he shall not be charged in Debt or *Fieri Facias*. *Id.* 345.

In Waste.

ET pꝛed' M. p M. B. Attoꝝ suum
ven & defend vim & injur' quando,
Ec. Et dic qđ bene & verum est qđ in-
fra Civit' pꝛed' het tllis consuetudo quat
pꝛdia' C. sꝛ superius allegavit. Et ex
quo p Parr' pꝛed' apparet qđ pꝛdia' C. D.
p Testam suum pꝛed' non legavit pꝛesat'
C. H. C. L. & A. reversionem Messuagii
pꝛed' nisi per ista verba viz. omnia terꝛe
teñta reddie' & servie sua qđ ipse tempoe
consecration Testam pꝛed' in Civit' pꝛed' vel
Suburb ejusdem in manibus ipsius
C. D. existerant & restabant hend' & te-
nend' pꝛed' C. H. C. L. & A. & non re-
versioni Messuag pꝛed' p expꝛessum noēn
reversionis Et dic qđ liber' tent' Mes'
pꝛed' tempore Regac pꝛed' existerat & re-
stabat in pꝛed' M. per formam Dimiss.
pꝛed' Sicqꝫ nihil Reversion pꝛed' Mes'
per ill' generalia verba pꝛesat. C. H. C. A.
& A. p Regac pꝛedia' transire potuit
N. per'

Per' judic' Et quod pred' C. fil', &c. ab
 Actione sua pcludat' &c.

Et pred' C. fil' ex quo pred' M. non
 deducit quin reversione Mess. pred' tempore
 Legac' pred' fuit in pred' C. O. nec quin
 idem C. Legac' in Part' pred' spec' modo
 & forma in eadem Part' content' fec' nec
 quin pred' M. fec' pred' Vassum in Part'
 spec' per' judic' C. qd' pred' M. de Vasso
 pred' convincatur Et quia Justic', &c.
 Vide Rast. Ent. 695. Et Judic' pro quer'
 post multas motiones Argumenta & ma-
 turam considerationem per Justic', &c.

And thus much for the Causes of a Demur-
 rer to a Declaration: And it is to be noted,
 that after Demurrer join'd the Judges are to
 give Judgment according as the very Right of
 the Cause and Matter in Law shall appear,
 without Regard to any Want of Form in any
 Writ, Return, Complaint, Declaration, or other
 Pleading, Process, or Course of Proceeding,
 except those Causes only which the Party in
 his Demurrer shall particularly set down.

Also if there be a Demurrer for Part, and
 Issue for Part, it is usual for the Court to give
 Judgment upon the Demurrer first, but it is in
 the Discretion of the Court to try the Issue
 first if they please. See Co. Lit. 71, 72. &
 Stat. 27 Eliz. 5.

Of Pleas, and General Bars.

Of a Plea in Bar, &c.

THese Things being premised, we will next proceed to the Plea or Bar in several Actions, with the respective Replications, Rejoinders, and other Matters relating to the same.

And herein it is to be observ'd, that Pleas are divided into General and Special.

The General Pleadings are such as these, Of General Pleas.
(*Viz.*)

Non Assumpsit.

Non est factum.

Non Culpabilis.

Nil Debet per Patriam.

Non Detinet per Patriam, and such like.

And they seem to be so called, because they are so generally used and known, that upon the naming them, either Party knows both the Matter and Manner of them.

Yet I think (properly speaking) that those only may be call'd General Pleas, which require no Replication, but immediately tender an Issue to the Plaintiff, as these before mentioned. For where they require a Replication, Of Special Pleas.
as *Plene Administravit, Ne unques Executor, Ad-*

*ministratio nunquam Commiss. Son Assault De-
mesne per Dures, per Minas, and the like, (and
that under Counsel's Hand, before the Plain-
tiff can be obliged to receive them) they may
therefore be called Special Pleas.*

Again, there are other Special Pleadings, more properly so called, which have no settled Form, but are specially drawn on either Side, as the Case requires; one Party endeavouring to make good and enforce his Action, Title, Debt or Damages; and the other striving to defend and save himself, his Lands, Money, Goods or Possessions.

And tho' these last Sort have no settled Form, yet Time hath produced store of Precedents in the many Volumes now extant, which may very well be adapted to the necessary Circumstances of either Party, by a skilful Hand.

Yet here one Objection may offer it self, (*viz.*) that 'tis not material for Clerks or Attornies to trouble themselves about such Special Pleadings, since they are to be settled and subscribed by Counsel.

But this is easily to be answered by those, who not only find the Profit of their Labour, but also a quicker Dispatch, and better Understanding of their Business.

Now let us return to our Purpose, and observe, That if the Defendant have no Advantage of Abatement, or Demurring in Law, he must plead in Bar of the Action.

Therefore we will next consider the Plaintiff's Action, and what Pleas the Defendant may plead in Bar.

And here again it is obvious to observe, That before the Defendant plead Special Mat-
ter,

ter, he may plead such General Bars as follow, (*viz.*)

A General Release, or Defeazance.

An Acquittance ; or

Acceptance of any other Thing, &c.

Tender of Amends.

Concord, or Arbitrament.

A former Judgment or Recovery.

Statute of Limitations.

Disability of the Plaintiff, or Privilege of the Defendant, &c. as the Case requires.

General Bar by Release pleaded.

ET p̄dia' C. D. per J. S. Attor̄n suum
venit & defendi vim & injur' quan-
do, &c. Et dic' qđ p̄dia' C. D. actionem
suam p̄ed' versus eum here non debet
quia dic' qđ p̄dia' C. p nomen C. D.
de P. in Com' Hunt' Gen' post confectio-
nem Indentur' p̄dia' scilicet primo die
Novembris anno, (&c.) apud P. p̄dia'
quoddam Scriptum suum Relaxationis
* quod idem C. sigillo p̄ed' C. signat'
hic in Cur' profert cujus dat' est eisdem
die & anno relaxabit remittit & omnino
tunc p se Hered' & Executoz' suis imper-
petuum quiet' clam' eidem C. p nomen
C. D. de L. in dicto Com' Gen' omnes &
omnimod' actiones personales Sextas
Querelas Debit' Executiones & Transg'
quas vel que unquam ante tunc fuit
het seu in futur' quovismodo extunc here
posset versus p̄ed' C. ratione vel causa
quacunq' ab origine Mundi usq' in diem

In Covenant.
The Defen-
dant pleads a
Release of
all Actions
Personal.

* A Defen-
dant pleaded
a Release,
and said not
*Quod hic in
Cur. profert,*
&c. and
Plaintiff de-
murr'd, and
shew'd it for
Cause.

confectionis ejusdem scripti Relaxationis Et hoc parat' est verificare Unde petit' judicium si pred' C. contra pred' Scriptum Relaxationis sue prop' orconem suam predicta' versus eum here debeat, &c.

In Debt.

N. **E** C pred' N. p — Attoꝝn suum beā
 & def. vim & injur' quando, &c.
 Et dic' quod pred' H. actionem suam pred' versus eum here non debet quia dic' qđ post tempus confectionis scripti predicta' scit (tali die & anno) apud (&c.) idem H. per quodam scriptum suum Relaxationis quod idem N. sigillo ipsius H. signat' hic in Cur' profert cujus dat' est eisdem die & anno remittit relaxabit & omnino p se Hered' Executoꝝ & Assign' suis imperpetuum quiet' clam eisdem N. p nomen (&c.) omnes & omnimod' actiones personales scđ querel' & demand' que versus ipsum N. tunc fuit seu quovismodo extunc in futurum here posset ratione quacunque a principio Mundi usq; diem confectionis ejusdem scripti Relaxationis Et hoc parat' est verificare Unde petit' judicium si pred' H. actionem suam pred' versus eum here debeat, &c.

Repl.

Et pred' H. dicit quod ipse per aliqua allegat' ab actione sua pred' habend' precludi non debet quia dicit quod predicta' scriptum Relaxationis non est factum suū Et hoc petit qđ inquiratur p priam Et pred' N. filit' Jo, &c.

Vide Plac. Gen. 248, 346, 347. Thomps. 155, 129. Han. 103, 104. Bro. Vad. 503. Bro. Red. 186.

A. versus B.

Quando, (Ec.) Action' non (Ec.) Quia die qđ post confectionem Scripti Obligatorii pđia' pđictus A. p quoddā Scriptum suum Relaxationis quod idem B. hic in Cur' pferet' geren' dat' decimo die Maii anno septimo supradicto & cđ B. post confectionem ejusdem Scripti Obligatorii scđ decimo tertio die ejusd' mensis Maii anno supradicto apud D. pđict' pđmo delibat' p nomen A. S. de D. in Com L. Neom remisit relaxabit & omnino p se & heredibus suis imperpetuū quiet' Clam' eidem B. p nomen B. R. de D. pđia' Gen' omnes & omni-mod' actiones deba' debit' Bill' Obligationes Judic' executiones & demand' quęcunq; que versus eundem B. tunc habuit vel que ipđ Hered' Executor' Administrator' vel Assignati sui vel aliquis eorum ad aliquod tempus extunc habere possunt vel deberent vers' ipm' B. Heredes Executor' & Administrator' vel aliquem eorum pđ aliqua materia sive causa quacunq; a principio Mundi u'que diem confectionis ejusdem Scripti Relaxationis Et hoc paratus est verificare Unde per' judic' si pđia' A. action' suam pđia' versus eum hēre debeat, &c.

Precludi non (Ec.) Quia die quod pđict' Scriptum Relaxationis liberat' fuit pflat' B. pđictō decimo die Maii qua die idem Scriptum gerit dat' Absq; hoc quod Scriptum Relaxation' pđmo deli-

Defendant pleads a Release, which tho' it bears a former Date, was first delivered after the making the Bond, &c.

Repl.

Traverse.

berat' fuit p̄fat' B. post confessionem scripti Obligatorii p̄red' p̄out idem B. superius allegavit Et hoc parat' est verificare Unde pet' judicium & debum suum p̄red' unacum dampnis suis occōne detentionis debi ill' sibi adjudicari, &c.

Issue upon
the Traverse,

Et p̄dia' B. dic' qđ scriptum Relaxationis p̄d' p̄mo delibat' fuit eidem B. post confessionem p̄red' script' Obligatorii p̄out ip̄d' superius allegavit Et de hoc pon' se super p̄riam Et p̄dia' N. filii' Ideo, &c.

Vide 1 Bro. 177. Pl. Gen. 348. Bro. Vad.

505, 514.

Solbit denar' ante diem Orig Et quer dedit Relaxationem. Cl. Aff. 129.

A Deed taketh Effect by the Delivery, and a Jury shall be charged to enquire of the Delivery, but not of the Date; and the Time of the Date is presumed to be; the Time of the Delivery, unless the contrary appear.

Defeazance
pleaded.

Note, That in Debt upon a Bond, dated Apr. 8. Anno 16 Car. 2. The Defendant pleaded, That after the making of the Bond, viz. the same Day and Year the Plaintiff made him a Defeazance, and thereby promised, &c. That if he did not before the last of June produce Witnesses to prove, that the Money in the Condition mention'd was a true Debt, and that the Defendant before the making the Bond had promised to pay it, then the Bond should be void; and avers, that the Plaintiff did not produce Witnesses to make such Proof, &c.

To which the Plaintiff demurred, and the Court gave Judgment for the Plaintiff, because

cause the Defendant had pleaded the De-feazance to be made after the Bond, and not at the same Instant : But *Saunders* says *Et hoc minus consult' ut mihi videtur*; for altho' the Condition of a Feoffment of Lands ought to be contained in the same Deed, or in another made and sealed at the same time; yet that it was clear Law, and the common and usual Practice was, that a Bond or Statute may be defeated by a Deafeazance made afterwards. *Co. Litt.* 207. *Cro. Eliz.* 755. *Vide Saund. Rep.* 2. pag. 47, 48.

And the same Law of a Release to defeat a former Bond or Judgment.

As to the Pleading of Deafeazances, &c. you may find them in the Title of *Debt*, in the Fourth Part; but I will add one here for Examples sake.

A Deafeazance pleaded to an Action of Debt upon a Judgment.

Action' non, &c. Quia die qđ post
judicium pđia' in forma pđia' red-
dit' & ante exhibitionē Bille pđia' scit
(die & anno, &c.) apud Westm' in Com'
Midd' agreeat & concordat fuit p quod-
dam scriptum indentat' int' pđed' C. per
nōen C. C. de &c. ex una parte & quen-
dam M. C. & pđed' C. C. p nōia, &c. lex
altera parte Cujus quidem script' alte-
ram partem sigillo ip'ius C. sigillat' idē
C. hic in Cur' pferat' cujus dat' est die &
anno supradictis Qđ pđia' C. in Judi-
cio pđia' relaxaret & acquietaret pđia'
M. & C. (as in the Deafeazance) Et hoc, &c.
Unde

Unde, &c. Vide Thomps. Ent. 434. & 2 Mod. Intr. 231.

Debt sur Recogn Bar per Indentur Defeazancie p solutione 20 l. tli die quas Def. solvit & Rept quod non solvit. 1 Bro. 174.

Vide Winch Ent. 207, & 237. & vide Rast. 183, 184, &c. sed vide part. 4. Instr. Cleric.

A. Exec' de B. versus C.

C. pleads a Release made by H. another Exec. of B. unto one E. F. who was also bound with the said C.

Action non, &c. quia die quod ipse p' C. & quidam C. f. p'dia' 20 die Junii anno Regni dicti Domini Regis nunc, &c. septimo apud G. p'dia' in p'dia' Com L. p p'dictum Scriptum Obligatorium in Parr' p'd' sup'ius specificat' concesser' se teneri p'fat' B. in vita sua in p'd' 50 l. in Parr' p'd' mentionat' solvend' eidem B. cum inde requisit' fuissent Et iad eandem solutionem bene & fideliter faciend' obligaver' se & utrumque eor' p se p toto & in solido Hered' Executor' & administrat' suos firmit' p idem scriptum quodq' post confectionem p'dia' script' Obligatorii scilicet primo die Julii anno septimo supradicto p'd' B. apud G. p'd' in p'd' Com L. condidit testamentum & ult' voluntat' suam in scriptis Et per eand' ult' voluntat' suam constituit & ordinavit p'd' A. & quendam H. J. Executors testamenti sui p'd' & postea apud G. p'd' obiit post cujus mortem p'd' A. & H. onus executionis testam' p'd' super se suscep' Et p'd' H. existen' un' Executor' p'd' B. ut prefer-

tur

tur postea scilicet decimo die Novembris
 anno septimo supradicto apud G. pdia'
 p nōen (Ec.) per scriptum suum Relaxa-
 tionis quod pdia' C. sigillo ipsius H. sig-
 nat' hic in Cur' pferit cujus dat' est eodē
 primo die Novemb' anno septimo supra-
 dicto p se Hered' Executor' & Admini-
 stratoz' suis remisit relaxabit & impe-
 tuum quiet' clam' pstat' C. F. qui p scrip-
 tum pdia' simulcum eodem C. pstat' B. ut
 pferitur in debto pdia' tenebatur & obli-
 gabatur p nōen (Ec.) omnes & omnino-
 das actiones, (Ec.) a principio Mundi
 usque diem dat' pced' scripti Relaxatio-
 nis Et hoc (Ec.) Unde, (Ec.) Vide Bro.
 Vad. 513.

Note, That one Executor may convey the
 Goods, or release Debts without his Compa-
 nion, and that any one may do as much as
 all together. *Hill. 48 Ed. 4. 14. 15.*

But it is said to be otherwise of Administra-
 tors, because they have but one joint Au-
 thority.

And that an Executor may release before
 Probate of the Will or Testament; but can-
 not have Debt before the Probate. *5 Co. 28. a*
7 H. 4 18.

Executor dedit Def. Relaxation'. Winch. Ent.
311.

Release in Annuity, *Plac. Gen. 104.*

Release pleaded in Case. *Vide Bro. Vad. 98.*
116. Read's Dec. 105, 111. Cl. Ass. 116, 129,
257. Hansf. 43. Thomps. 72, 73.

Simile in Covenant. Rob. Ent. 166. Vide
postea Tit. Covenant.

Simile

Simile in Dower. *Rob. Ent.* 258, 263, 275.

Simile in Error. *Read's Dec.* 309. *Bro. Red.* 372.

Law Error. 259.

Simile in Quare Impedit. 2 *Bro.* 266.

Simile in quod ei defoz^e 1 *Lut.* 738.

Simile in Trespass. *Winch. Ent.* 1005.
2 *Bro.* 151. *Thomps.* 335. *Clift.* 630. Dupli-
citer ad utramq^e trans^s. See the Fourth
Part Tit. Debt, and Tit. Trespass, &c.

A. versus B.

In Banco Re-
gis. Release
and Plaintiff
non-suited.

ET hoc parat^r est verificare Unde pet^r
Judicium si p^rdict^r A. actionem suam
p^red^r inde v^rlus cum here seu mature-
nere debeat, &c. Et super hoc idem B.
pet^r q^d p^red^r A. ad placitum ip^rius B.
sup^rius placitat^r replicet & jungat in-
erit^r cum eodem B. Super quo dies in-
de dat^r est partibus p^red^r coram D^ro
Reg^r apud W^resim^r usq^e diem — p^ror^r
post — videlicet p^red^r A. ad placitum ip^rius
B. sup^rius placitat^r replicand^r, &c. Ad
quem diem coram Domino Reg^r apud
W^resim^r ven^r p^red^r B. per Attorn^r suum
p^rdict^r Et p^red^r A. licet ad eundem diem
solemnit^r exat^r non ven^r sed default^r fec^r
Ideo cons^r est q^d p^red^r A. nihil capiat
p^r Billam suam sed quod ip^e & p^reg^r sui
de p^rs^r scit^r Johes Doe & Ricus Roe
sint inde in mia, &c. Et p^red^r B. eat
inde sine die, &c.

Vide Rast. Entries 173. Clerk. Man. 272.
Bro. Red. 99.

General.

General Bar by Acquittance pleaded.

Et p̄dix' M. B. p ——— Attornd suum
 ven, (Ec.) & die quod p̄dix' G. &
 H. acconem non) quia die qđ post con-
 fectionem scripti p̄dix' scit die, (Ec.)
 anno (Ec.) p̄ed' H. apud C. in Com
 R. p quoddam scriptum suum quod idem
 M. hic in Cur' p̄fert cujus dat' est eis-
 dem die & anno p nomen H. Ec. (ut in
 scripto (cogn) se recepisse & huisse die
 confectionis ejusdem scripti de eodem M.
 per nomen M. B. de, (Ec.) quadragint'
 solidū per nomen quadragint' solidū in par-
 tem solutionis majoris summe de qui-
 bus quidem quadragint' solidū fatebatur
 se fore solut' dictumq; M. Hered' & Exec'
 suos inde omnino fore quiet' per idem
 scriptum Et hoc parat' est verificare An-
 de pet' judic' si, Ec.

Et p̄dix' G. & H. die qđ ipd per ali-
 qua (Ec.) precludi non debent quia idem
 H. die qđ p̄dix' scriptum Acquietancia
 non est factum suum Et hoc per qđ in-
 quiratur per priam & p̄dix' M. sicut' Et
 p̄dix' G. die qđ p̄dix' H. non cogn' se
 recepisse & huisse de dicto M. p̄dix' qua-
 dragint' solidū nec aliquem denar' inde p
 scriptum illud put p̄dix' M. superius alle-
 gavit Et hoc etiam pet' qđ inquiratur
 p priam & p̄dix' M. sicut' Jō, (Ec.)

*Repl' per l'un,
 Acquietancia
 non est factum
 & Issue sur ceo.*

*Repl. per
 l'aut', Non
 cogn' se rece-
 pisse, & Issue
 sur ceo.*

Vide Bro. Meth. Nov. 185. & Bro. Red.
 174, 186. Plac. Gen. 248.

As to Parcel, the Defendant pleads an Acquittance from the Plaintiff; and as to the Residue, *Non informatus* and Judgment.

Plaintiff replies, That the Acquittance was for another Debt.

Repl.

Et p̄dict' N. die qđ ip̄e p aliqua pal-
legat' ab acōne sua p̄ed' quoad p̄dict'
6 l. unde p̄ed' N. p̄litabit acquietan-
ciam, &c. hēd' p̄cludi non debet quia
die qđ ip̄a recepit de p̄fat' N. p̄ed' 6 l.
in p̄ed' script' acquietanc' spec' in par-
tem solucon' p̄dict' 10 l. Unde ip̄e sup̄ius
cognovit seipm̄ fore satisfact' & non in
partem solucon' p̄ed' 10 l. modo petit' put
p̄ed' N. superius allegavit Et hoc (&c.)
Unde pet' Iudic' & p̄ed' 60 l. unacum
dampn' sibi adjudicari.

Rejoinder
and Issue.

Et p̄dict' N. die qđ E. fec' p̄d' Script'
acquietanc' eidem N. in part' solucon'
p̄ed' 10 l. modo superius petit' put ipse
superius allegavit Et de hoc, (&c.) Cessat
Executio quousq; (&c.)

Vide Rast. Ent. fol. 179, 180.

Bar by an Acquittance mentioning that
the Bill could not be found, and Averment
that it is the same Bill, and Repl' p non est
fac. Bro. Red. 201. See 4 Part, Bar al Bill.
Al part' denar' lebat le vic plede nil de-
bet p p̄riam al resid' Special Acquittance.
Winch. Ent. 306. al part' Bar p acquittanc'
Repl' fuit de parte al Debi Rej. quod
fuit per parte Debi petit', Plit. Gen. 5.
In trans' Bar qđ in cons' qđ def. ac-
quiteravit quer' de sibus trans', Curr'

ac-

acquietabit Def. 2 Bro. 145. See 4 Part
Inst. Cl. Bar in Debt sur Obl.

General Bar by Concord pleaded.

A Etia non Quia ptestando non cogn' *Barr' per Con-*
aliqua in Narracon' predicta' fore *cord' in Case.*
vera p placito tamen idem R. dicit qd
post assumptionem & pmiss' pred' fieri
supposit scit primo die Septemb'is an-
no (Ec.) apud C. in Com' H. int' eun-
dem C. & p'fat' R. tam de assumptione &
promission' predicta' qm' de omnibus aliis
transgr' & offensis inter ipsum R. & p'fat'
C. ante eundem primum diem Septem-
bris hit' fac' mot' ppetrac' libe pendentis-
bus p mediationem amicos' suorum inter
eos amicabiliter intervenien' talis ha-
bebatur concordia videlt qd idem R. in
plenam satisfactionem & relaxationem tam
assumptionis unde predicta' C. superius
se modo querit' qm' omnium aliar' transg'
& offens' per ipsum R. ante tempus illud
p'fat' C. fac' daret eidem C. unam Vac-
cam Et qd idem R. extunc versus p'fat'
C. tm' de assumptione & promission' predicta'
quam de omnibus aliis transgr' & of-
fens' esset quietus imppetunum Et idem
R. dic' qd ipse adtunc & ibi dedit & de- *Concord' per-*
libabit p'fat' C. unam Vaccam idemq' *form.*
C. Vaccam illam de eodem R. adtunc &
ibi recepit juxta formam & effectum
concordie pred' Et hoc parat' est verifi-
care unde p'f' judicium R. (Ec.)

*Issue sur nul
ziel Concord.*

Precludi non Quia die qđ non habebatur aliqua talis concordia inter ipsum C. & p̄lat' R. modo & forma quibus idem R. superius in barram p̄litando allegabit Et hoc pet' (Ec.) Vide Thompsl. 69.

*Bar.
In Covenant.*

Et modo ad hunc diem scit diem Veneris pr post Crastin Scđ Trin isto eodm' Termino usque quem diem p̄dia' J. habuit licenc' ad Willam p̄dia' interloquend' Et tunc ad respondend', Ec. coram Dño Rege apud Westm' ven' tm' p̄red' C. p̄ Attozn' suum p̄redia' qm̄ p̄dia' J. p̄ C. B. Attozn' suum Et idem J. defend' vim & injur' quando, Ec. Et die qđ p̄dia' C. actionem suam p̄dia' inde versus eum habere seu manutenere non debet Quia p̄testando qđ ipse idem J. p̄dia' tempore confectiois Indenture illius habuit plenam potestatem & legitimam auctoritatem dimittere & concedere p̄dictam domum Manerii & omnia & singula p̄missa cum p̄m̄ superius recitat' fore p̄dimissa scđm formam & effectum Indenture p̄red' pro placito tamen idem J. dicit qđ post confectioem Indentur' p̄red' scit decimo die Junii anno, (Ec.) apud R. in Com' C. p̄red' talis concordia inter p̄red' C. & J. habebatur scit qđ idem J. solberet p̄lat' C. in plenam satisfactionem & exonerationem conventionis p̄dia' & omnium & singulorū conventioū & agreementorum in Indentura p̄i spec quindecim libras Idemq' J.

La Des. protestand' dit que il avoit plein poiar a demi ser.

Pro placito il plede un concord en discharge del Covenant.

I. adtunc & ibm supinde solvit p̄fat' C. p̄dia' quindecim libras Nec p̄dia' C. eadem quindecim libras de p̄fat' I. adtunc & ibm in plenam satisfactionem & exonerationem conventionis illius & omnium & singulorum conventionum & agreementorum indentur' p̄dia' specificat' acceptabit & recepit scdm formam concordie p̄dicta' Et hoc parat' est verificare Unde petit iudicium si p̄dict' C. actionem suam p̄dicta' inde versus eum here seu manutenere, &c.

Et p̄dict' C. dic' qd' ipse p̄ aliqua p̄ p̄dict' I. superius p̄litando allegat' ab actione sua p̄dict' versus ipsum I. pend' p̄cludi non debet quia dic' qd' non habetur aliqua talis concordia inter ipsum C. & p̄fat' I. qualis in barra superius allegatur Et hoc petit quod inquiratur per priam' Et p̄dict' C. alit', &c. Nō ven' inde Jur', (&c.)

Repl.
Qd' null' tal'
Concord' &
Issue sur ceo.

R. Et p̄dict' W. p̄ — Attorn' suum In Debt.
ven' & defend' vim & injur' quando, &c. Et dicit quod p̄dict' R. actionem suam p̄dict' inde vsus eum habere seu manutenere non debet Quia dic' qd' post tempus quo suppon' ipm' W. p̄ equam de p̄fat' R. in forma p̄dict' emisse scite (tali die & anno) apud O. in Com' O. inter p̄fat' W. & dict' R. tam de debito p̄ qm' de omnibus aliis debit' cāsgre contractibus querel' debat' & demand' inter ipsos W. & R. ante tempus illud debit' mot' hīc sive p̄petrat' p̄ mediacionem
O ami:

amicorum suorum inter eos amicabiliter intervenien- talis habebatur concordia videlicet quod idem M. p omnibus debitorum transgre- contractibus querel' & debat per ipsum M. pstat' R. aliquo modo debitorum hic mot' sive perpetrat' solveret pstat' R. triginta solidi' Et quod uterque eorum versus alterum de omnimodo debitorum transgre- contra querel' & debat' inter eos ante tempus illud debitorum hic sive mot' quiet' esset imppetuum quos quidem triginta solidi' idem M. pstat' R. adtunc & ibi solvit secundum formam concordie predicta' Et hoc parat' est verificare unde pet' iudicium si predicta' R. actionem, (Ec.)

Repl', Quod nul tiel concord (ut supra.)

Bar.
Plit' Concord'
ad transgre'.

Ad hi & armis non cul' Ad resid' (actio) non quia die quod post predictum tempus quo supponitur (Ec.) scit tal' die anno & loco (Ec.) inter eundem C. & pstat' D. tam de transgre' p quam de omnibus aliis transgre' debitorum debat' & demandant' eos ante eundem diem (Ec.) hic mot' sive penden per mediacionem amicorum suorum inter eos amicabiliter intervenien- talis habebatur concordia videlicet quod idem C. in plenam satisfactionem tam transgre' illius quod omnium al transgre' debitorum debat' & demandaret & solveret pstat' D. quinquaginta & quinque solidi' quos quidem 55 s. idem C. pstat' D. p satisfactione transgre' illius adtunc & ibi dedit & solvit iuxta formam & estatum concordie predicta' ac idem D. quinquaginta quinque solidos illos de

de ipso C. pro satisfactione tñgr' illius
ad tunc & ibm recepit Et hoc parat' est
verificare Unde petit iudicium, (Ec.)

Repl' Null' talis concordia (ut supra.)
Vide Thomps. 305.

N. **E**t quoad venire vi & armis necnon
capcion' & asportacion' bonorum &
catallor' pdict' (non cul) Et quoad in-
sult' verberacion' vulneracion' & maletrac-
tacion' ipsius Quer' (Neco non) Quia
dic' qd idem Def' ac quidam A. B. pre-
dict' tempore quo, (Ec.) in ipm' Quer' in-
sult' fecer' ac ipm' verberaver' vulnera-
ver' & maletraxer' pro quibus quidem
tñgr' & insult' postea scilicet 10 die Maii
Anno Rñij Dñi Regis nunc 7. apud S.
in Com' pdict' int' pdict' Quer' & p'fat'
A. B. & ipm' Def' p' mediacion' amicorum
suorum inter eos amicitia' intervenien-
tis habere concordia, viz. quod predict'
A. B. solveret p'fat' Quer' 40 s. in ple-
nam exoneracon' & satisfaction' insult'
verbacon' vulneracon' & maletractacon'
pdict' p' ipm' Def' super ipm' Quer' in
forma pdict' fact' super quo predict' A. ad-
tunc & ibm solvit p'fat' Quer' pdict' 40 s.
in plenam satisfaction' insult' verbacon'
vulneracon' & maletractac' predict' quos
quidm' 40 s. idem Quer' de eod' Def' per-
man' pdict' A. apud S. predict' ad tunc &
ibm acceptabit & habuit Et hoc, (Ec.)
Unde, Ec.

Def. pleads,
That the
Trespas was
done by him
and another,
and the other
made Satis-
faction for
him.

Et pdict' quer' quoad pdict' p'litum p'd
def. ad verbacon' vulneracon' & male-
tractacon' predict' superius in barram

Repl.
That the o-
ther only
made Satis-
faction for
himself.

plitat' (precludi non) Quia dic qđ bene
 & verum est qđ pzed' A. B. & pzed' def.
 in ipm' quer' insult' fecer' & ipm' verba-
 ver' vulneraber' & maletractaber' prout
 pzed' def. superius allegabit Sed idem
 quer' protestando qđ nulla tñs habebatur
 concordia int' ipm' quer' & pzetat' A. B.
 & def. qualis pzed' def. supius allegabit
 p plito die qđ pzed' 10 die Maii anno 7.
 supradicto apud S. pzed' talis habebatur
 concordia int' ipm' quer' & pzetat' A. B. p
 mediacon' amicoꝝ suoꝝ int' eos amica-
 bilit' intervenien' qđ idem A. solveret
 eidem quer' 40 s. in plenam satisfactio-
 nem pzed' insult' verberacon' vulneracon'
 & maletractacon' p ipm' A. tantum su-
 per eund' quer' in forma pzed' fact' Qđqđ
 idem quer' postea scitt eodem 10 die Maii
 apud S. pzed' predictos 40 s. de eodem
 A. in plenam exoneracon' & satisfactio-
 nem pzed' insult' verbacon' vulneracon' & ma-
 letractacon' per eund' A. tantum super
 ipm' quer' in forma pzed' fact' recepit &
 acceptabit prout pzed' def. superius allega-
 vit Absqđ hoc qđ idem quer' recepit de
 pzetat' A. eisdem 40 s. in plenam satisfac-
 tion' pzed' insult' verbacon' vulneracon' &
 maletractacon' per pzed' def. superius in
 ipm' quer' in forma pzed' fact' put pzed'
 def. superius allegabit Et hoc parat' est
 verificare Unde ex quo pzed' def. tñsgr' &
 insult' pzed' superius cogn' petit iudicium
 & dampna sua ocon' tñsgr' & insult' ill'
 ubi adjudicari, &c.

Traverseth
 the Satisfac-
 tion alledg-
 ed for the
 Defendant.

Rejoinder.

Et pzed' def. ut prius dic qđ pzed' quer'
 recepit de pzetat' A. pzed' 40 s. in plenam
 exo-

exoneracion' & satisfacion' pzed' insult' verbacon' vulneracon' & maletractacon' per ipm' def. super pzed' quer' in forma pzed' fac' pout ipse def. superius allegabit Et de hoc pon' se super pziand' Et pzed' quer' silit' Ideo quoad triand' tamen erit' ist' qm' pzed' al' erit' superius junct' pcept' est Dic qd venire fac', (Ec.)

Bar de solucon' denar' in plen' satisfacion' trans', (Ec.) Vide Clerk's Assist. 96. Thomp. 305, 322, 387, 398. Winch. 961, 962, &c. Bro. Red. 490. Al' trans' & insult' Plit. Gen. 623. In Case sur Ass. Clift. 198. Thomps. 69. 1 Bro. 26. Trans. 46, 108.

In Pleading of an Accord it is to be observed, That the Thing given and received ought to be valuable and satisfactory ; a Charge to the Giver, and a Benefit to the Receiver. *Dyer 356. Fitz. Accord. 3, 4.*

And yet if the Defendant gives the Plaintiff a Pottle of Wine in Satisfaction, and he agree to it, this is a good Accord and Bar in the Action. *Fitz. Accord. 1. Fitz. Bar. 26.*

It must be perfectly and completely finished and executed, and Satisfaction made according to the Agreement before any Action brought; and tender of Money without Payment is no good Plea in Bar in Trespass. *17 Ed. 4. 2. Old N. B. fol. 122.*

It must be in the Life-time of him that did the Wrong ; for if it be executed by the Heir or Executor of the Trespasser, this will be no Bar where the Action may lie against the Executor. *Dyer 356.*

The Party to whom the Wrong is done must accept the Amends according to the Agreement; for it seems, notwithstanding the Accord, he may refuse it; and Tender without Acceptance will be no Bar. 9 Co. 79. *Dyer* 356. 5 *Ed.* 4. 7.

And if divers do a trespass, and one make a good Accord, this will discharge, and be a Bar for all the rest; so if a Stranger or Friend give the Amends in Recompence, this it seems is as good as if the Party himself did give it. 9 Co. 79.

So if divers do a Trespass, and the Party release it by general or special Words to one of them, this is a Discharge of all, and every one of them may plead it in Bar if he can get and shew it, for they are but as one Trespasser. *Hob. Repl. pl.* 96.

Accord with Satisfaction is a good Bar in a Writ of Covenant, because the Duty accrueh not meerly by the Deed, but by a Tort subsequent together with the Deed.

And it is a good Bar in an Attaint, because this is not founded upon the Record only, but upon the false Oath also.

And in all Cases, where an Arbitrament is a good Plea, an Accord with Satisfaction is also; and so generally in all Actions where Damages only are to be recovered. 6 Co. 44. *a.* *Blake's Case.*

But when a certain Duty accrues by the Covenant at the Time of doing it, Accord with Satisfaction is no Plea. *Idem.*

So where no certain Duty accrues until the subsequent Act or Wrong, there Accord with Satisfaction is a good Plea. *Idem ibid.*

In

In a Writ of Covenant where the Breach is for not repairing the House, Accord between the Plaintiff and Defendant, and Execution of it in Satisfaction and Discharge of the Defect of the said Repairs, is a good Plea. 6 Co. 44. 2 Cro. 100.

It was resolved *per totam Curiam*, That Accord in all Actions (wherein the Wrong is supposed to be done *vi & armis*, where *Capias* and the *Exigent* lieth at the Common Law) is a good Plea, as in Trespass and Ejectment, *Detinue* of Charters, Horse or other Goods; for where the Certainty is to be recovered, an Accord is a good Plea. *Vide* 2 Co. 78.

In Actions where Damages only are to be recovered, Arbitrament or Accord, &c. is a good Plea, though the Action be grounded on Deed or Record, but the Satisfaction ought not to be of any Thing whereof the Plaintiff had Property. 6 Co. 44. *Dyer* 75, 356. 3 Cro. 356. *Yelv.* 124.

Accord and Satisfaction is a good Plea in Personal Actions, but not in Real. 9 Co. 78, 79, 80. 4 Co. 1. 13 H. 7. 20.

In all these Cases, Accord with Satisfaction is a good Plea.

1. In all Cases *vi & armis*.
2. Where *Cap.* and *Exigent* lies by the Common Law.
3. In *Ejectment*, because it is but in the Nature of a Trespass.
4. In Appeal of *Murder*.
5. In Ravishment of *Ward*.
6. In *Detinue* concerning personal Things.

General Bar by Concord.

7. In Detinue concerning Charters of Freehold.

8. In Quare Ejetit infra terminum.

9. In an Action of Waste, in le tenuit, but not in le tenet. 6 Co. 44. 2 Inst. 307.

10. In an Action of Debt upon a Lease for Years.

11. In a Promise to build a House.

12. In an Action of Covenant, &c. 9 Co. 78, 79. 35 H. 6. 30.

If Part of the Agreement is not performed, the Plea is ill. 1 Cro. 193.

And the safest Way of pleading an Accord, is to plead it by Way of Satisfaction, and not of Accord only: And you need say no more than that the Defendant had paid the Plaintiff 5 s. in full Satisfaction of the same Action, which 5 s. the Plaintiff received, &c. Et Judgment fit Accord. 9 Co. 80. 19 H. 6. 29. Vide Brownl. Lat. 120. Winch. Ent. 170.

General Bar by Acceptance pleaded.

Acceptance
of a Surren-
der pleaded.

Action non Quia die quod ipse idem A. p. post consecrationem dimissionem predictam eidem A. p. predictam C. in forma predicta factam et ante concessionem reversionis predictam eidem W. et C. scilicet 8 die Martii Anno Regni Dni Regis nunc 15 idem A. apud L. predictam in Parochia et Warda predicta factum reddidit eidem C. Terminum annorum ipsius A. de et in tenentis predictis cum pertinet sibi in forma predicta dimissum. adtunc venturum et in expirat ac totum statum jus victum et interesse suum de et in eisdem quam

quam quidam sursum reddicionem idem C. adtunc & ibi acceptabit C. hoc, (Et.) Unde, (Et.)

Precludi non Quia die quod predicta M. non sursum reddidit eidem C. p^d terminum annorum ipsius M. de & in testis p^d cum prin' sibi in forma predicta dimiss. seu statim jus tituli sive interesse suum de & in eisdem modo & forma prout p^dia M. superius inde p^licando allegabit Et hoc per quod inquiretur per patriam Et predicta M. inde silit'. (Et.) Vide i Saund.

Repl.

236

ff. **A**ction' non Quia die quod post di-
mission' p^dia parcel' sive porcion'
decimar' garbar' frumenti & granorum
p^dia per p^lat Decan' & Capitul' eidem
C. B. ut p^lefertur fact' & diu antequam
predicta reddidit 280 l. pro quatuor uli' an-
nis p^d quinq' annorum in Parr' p^d spec
aut aliqua pars ejusdem debent' debet'
scit' (tal' die & anno) apud L. p^dia in
Paroch' & Warda p^dia idem C. B. per
quandam Indentur' suam Sigillo suo
sigillat' & heren' dat' eisdem die & anno
concessit & assignabit totum interesse & ter-
minum annorum sua que ipse tunc huius
ventur' de & in p^dia parcell' sive porcion'
Decimarum p^d cum prin' cuidam J. D.
Ar' virtute cujus quidem concession'
idem J. D. in p^dict' parcell' sive porcion'
Decimar' p^dia cum prin' intrabit & fuit
inde possessoriar' Et ulterius idem C. B.
die quod p^led' Decan' & Capitul' postea
scit' (isti die & anno) apud L. p^dia in
Paroch'

Assignment
of Term and
Acceptance
of Rent from
the Assignee
pleaded.

Paroch & Warda p̄dix' huerunt noticiam de concessione & assignacione p̄d Me scientes concesson' & assignacon' p̄d possea scitit eisdem die & anno ult' supradix' apud I. p̄ed' in Paroch & Warda p̄d receper' & acceptaber' de p̄fat' J. D. p̄d redditum sic ut p̄fertur p̄o decimis p̄d supius reservat' (viz.) sex * denar' de reddit' p̄d) ac ipm J. D. tenentem eorum de decimis p̄ed' adtunc & ibidem acceptaber' Et hoc, (&c.) Unde, (&c.)

* *Vide postea.*

Plaintiff's Demurrer:

IT was objected in this Case, That the Money reserv'd for the Tithes was no Rent incident to the Estate of the Demise, but only lay in Privy of Contract between the Lessor and Lessee; and the Acceptance of the Rent from the Assignee hinder'd not, but that the Plaintiff might at all Times resort to the Defendant, being the Lessee, for the Rent upon the Privy of the Contract, notwithstanding such Acceptance. But the Court seemed to incline, That it was a Rent that went with the Reversion, and that the Assignee was liable to pay it. — Yet gave Judgment for the Plaintiff for the Fault in the Plea, viz. sex * denarios de reddit' p̄dix', tho' the Defendant's Counsel urged, That they were superfluous, and inserted by Mistake of the Clerk; but the Court said, That the Plea thereby was altogether insensible. See 2 Saund. 298, &c. Winch. Ent. 153.

* *Vide antea.*

ff. Quod

fi. Quod Def. Dedit script' Obl' in excoꝛaon' pꝛemiss. Clift. 199. 1 Bro. 262.

Bene & verum est qđ assumpsit, sed solvit post ult' Cont' Et quer' acceptabit. Idem, 203.

Def. pꝛo secura solutione dedit Obl' Repl' non dedit. Hans. 104. Cl. Ass. 117.

Acceptance de autre Benefice pꝛitit'. Winch. Ent. 626.

Acceptance de Annuity in Dowry pꝛitit'. Pl. Gen. 283, &c.

Issue in Tail accept Rent reserve per Tenant in Tail. 2 Bro. 166.

By Acceptance of other Things pleaded.

IT is said, That when the Condition is for Payment of Money, yet by Accord and Agreement any other Thing may be given in Satisfaction of the Money, so that if the Feoffee or Obligee accept a Horse, &c. in Satisfaction, this is good; but if the Condition were for the Delivery of a Horse, &c. altho' the Obligee or Feoffee accept Money, &c. for the Horse, it is no Performance of the Condition.

The like Law is, if the Condition be to acknowledge a Recognizance of 20 *l.* if the Obligee or Feoffee accept 20 *l.* in Satisfaction of the Condition, it is not sufficient in Law; and so it is of all other collateral Conditions. 9 Co. 78. 12 H. 4. 23. 3 H. 7. 4. b. 11 H. 7. 20, 21. 19 E. 4. 1. b. 22 E. 4. 24.

Note, It is said, That if a Debt be due on an Obligation, and I take a Statute for this

Debt from the Obligor, this doth not determine the Debt due by the Obligation, but that I may sue upon either of them at my Election, and the Statute is no good Bar to the Obligation. See 6 Co. 45, 49. *Bro. Debt.* 27.

Again it's said, that when the Money is to be paid to a Stranger, there if the Stranger accept of an Horse, or any collateral Thing in Satisfaction of the Money, it is no Performance of the Condition, because the Condition is to be strictly performed in that Case. But if the Condition be, That a Stranger shall pay to the Obligee, &c. a Sum of Money, there the Obligee (being Party, &c.) may receive a Horse, &c. in Satisfaction. 5 Co. 17. 4 H. 7. 4. *Dyer* 35 H. 8. 56. 27 H. 8. 1.

Also it's said, That if the Obligor, Feoffor or Lessor pay a less Sum, either before the Day, or at another Place than is limited by the Condition, and the Obligee, Feoffee or Lessee receiveth it, this is a good Satisfaction. *Co. Litt.* 212. b.

Defendant pleads, That a Stranger sealed and delivered a Bill to the Plaintiff in Discharge of the Bond, and that the Plaintiff accepted the Bill in Discharge of the Bond.

¶ **E**t predicta C. D. quando (Ec.) Et per auditum Scripti predicti Et ei legitur, Ec. per etiam auditum Conditionem ejusdem Scripti Et ei legitur in hec verba (the Condition of, &c.) Quibus itis Et auditis idem C. dic' qd predicta A. (Naton' non) quia dic' qd post consecutionem Scripti Obligatorum predictorum Et ante predictum 15 diem Martii in Conditionem predictam superius specificatam

scilicet primo die Martii Anno Regni dicti
 Dñi Regis nunc 7. apud L. predicti in Pa-
 roch & Ward predicti quidam C. f. de, &c.
 p mediacionem predicti C. D. quandam Wil-
 lam Obligatorum pro solutione decem librarum
 legatis monete Angli ad certum diem tunc
 futurum scribi fecit & sigillavit & illi ut
 factum suum predicti A. B. ad tunc & ibidem
 deliberavit quam quidam Bill Obligatorum
 decem librarum idem A. B. tunc & ibidem in
 plenam & integram solutionem & exona-
 tionem dictam 10 l. in Conditionem predictam Scripsit
 Obligatorum speciem acceptavit recepit &
 fuit Et hoc, &c. unde, &c.

(Precludi non) quia die quod predicta C. f.
 in hac predicta narrat non deliberavit
 eidem A. B. Bill Obligatorum predicta in
 hac ipse C. superius mentionat prout
 predicta C. superius plitando allegavit
 Et hoc per quod inquiratur per priam Et
 predicta C. filie Ideo Jur', &c. Vide Bro.
 Red. 236.

Repl.
 Qd' non deli-
 beravit Bill
 Obligatorum.
 And Issue.

Debt upon Two several Bonds of several Sums.

Defendant prays Oyer of the Bonds, and as
 to the First, pleads Payment at the Day, as
 to the other, pleads he delivered the Plaintiff
 Corn in Satisfaction.

¶ **E**t quoad predicta 12 l. de predicta 20 l.
 recit quas predicta A. erigit versus
 eum virtute predicti secundi scripti idem J.
 die quod ipse post confessionem ejusdem scrip-
 ti & ante predicta festum Pasce beat' Ad in
 Conditionem ejusdem scripti speciem scilicet
 20 die

20 die Dec Anno Rñi dia' Dñi Regis
nunc 7 apud L. in Com' pzedix' delibera-
bit pzetat' M. sex quarter' tritici quatuor
quarter' hordei quinque quarter' fligi-
nis, (Ec.) in satisfacton' 6 l. pzetat' M.
in pzedix' fest' Pur' bte Mā solvendū que
quidm sex quarter' tritici, (Ec.) pñ. M. in
satisfacton' pñ 6 l. de eodem J. adtunc &
ibm recepit Et hoc, (Ec.) Unde, (Ec.)

Vide 1 Brownl. 76, 111. 3 Brownl. 142.
Brownl. Red. 119, 196, 236, 237. Winch. Ent.
186, 187.

Repl.

Plaintiff as to the first Plea replies, That
he did not pay at the Day. Et quoad pzed'
12 l. de pzed' 20 l. residū quas ipse exigit
versus pzetat' J. virtute pzedix' secundi
scripti protestando (that the Defendant did
not deliver the Wheat, Barly, &c.) p placi-
to idem M. dic' qđ ipse non recepit nec
acceptabit pzed' sex quarter' tritici qua-
tuor quarter' hordei, (Ec.) de pzetat' J.
in plen satisfacton' pzed' 6 l. in pzedix'
fest' Pur' bte Mā solvendū pout pzed' J.
superius allegabit Et hoc filit' pet' qđ
inquiratur per patriam Et pzed' J. filit'
Ideo quoad triand tñd erit' ist', (Ec.)
pcept' est Vic, Ec. Def. delibabit quer.
Sex vaccas in satisfacton' Debi quas
acceptabit. Bro. Red. 169. Quod Def.
& al' Deliberaver' al' obl' qđ quer' accep-
tabit. Rob. Ent. 188, 192. Repl' quod non
& Erit' inde. Idem 234. Quod quer' ac-
ceptabit Locale in satisfacton' Debi
Repl' quod recepit p pignore & traverse
quod

quod recepit in satisfaccōne. Bro. Red.
202.

Vide 4 Part. Inst. Cler. Tit. Bar in Debito.

General Bar by Tender of Amends pleaded.

THIS is a Plea proper to an Action of Trespass, where the Defendant says, That he offered a sufficient Recompence for the Trespass done. In the Pleading of which these things are to be observed, *viz.*

If one would distrain my Beasts Damage-Feasant, and I offer him a competent Recompence before the Beasts be taken, or before they be impounded, this will be a good Bar, and so may be pleaded in the Action of Trespass. But such a Tender after the Beasts are impounded will not suffice. 5 Co. 76.

And yet in all Actions *Quare Clausum fregit*, if the Defendant do tender sufficient Amends before the Action brought, and in his Plea to the Action disclaim to make any Title or Claim to the Land, and the Trespass be by Negligence or Involuntary, this (if it be proved) will bar the Plaintiff by *Stat. 21. Jac. cap. 16*. See before *Uncoy's Dist.* &c. &c. Vide 1 Bro. 331, 332. 2 Bro. 278.

ET p̄d' N. per J. S. Attorn' suum
do, &c. Et quoad venire vi & armis
non cul', quoad treading and eating the
Grass Accon' non quia dicit qd ipse p̄dicit'
N. 20 die Jan' Anno Regni Dñi Regis
nunc 7 supradicto seu unqm' postea huc
usque non habet nec h̄c clamor sed
de-

Defendant
pleads, that
he tender'd
the Plaintiff
sufficient
Amends.

deadvocat disclamat here aliquod titulum seu interesse in Cto superius mencōnat' qđque Aberia pđia' p̄dicto tempore quo, &c. contra voluntat' ipsius M. in ctm p̄dicta' intraver' & blada & herbam tunc & ibm crescen' depast' fuer' conculecaber' & consumpser' Et idem M. ulterrius die qđ ipse post p̄dict' 20 diem Junii Ann' 7 sup̄radicto & ante diem exhibicon' Wille p̄dict' scil't 10 die Apr'il' Anno Regni die Dñi Regis nunc 7 sup̄radicto apud R. p̄dicta' obtulit p̄fatar' C. Quingue solidos leglis monete Angl' existen' sufficien' amend' p̄ transgr' p̄dict' p̄zo Aberiis p̄dicta' in cto p̄dicta' in plena satisfacion' transgr' ill' quos quidm 5 solidi p̄ C. de eodem M. recipere ad tunc & ibm recusavit Et hoc, (&c.) Unde, &c.

Repl.
Qđ non obtu-
lit, &c.

(P̄cludi non) quia p̄testando quod p̄dict' M. de injur' sua p̄p' ac voluntarie p̄dicto 20 die Januarii in Parr' p̄dicta' superius spec' ctm ipsius C. p̄dicta' apud R. p̄dict' in Com' p̄dicta' fregit & intravit ac blada & herbam ipsius C. p̄dicta' ibm tunc crescen' cum Aberiis p̄dicta' depast' fuit conculecabit & consumpsit put idem C. superius versus eum inde querite p̄testando etiam qđ p̄dicta' 5 solidi non sunt sufficien' amend' p̄o transgr' p̄dicta' in cto p̄dicta' cum Aberiis p̄dict' fact' p̄ p̄feto idem C. die qđ p̄ M. ante diem exhibicon' Wille p̄dict' non obtulit ad solvend' eidem C. p̄ 5 solidi in plenam satisfacion' trāsg p̄dicta' p̄pout p̄dict' M. sup̄ius placitando allegavit Et hoc, (&c.) Unde, &c.

Et

Et p̄d. A. ut prius die qđ ipse idem A. ante diem exhibicōn Bille p̄dia' obtulit ad solvendū eidem C. p̄dia' quinque solidū in plen' satisfactōn' transgr. p̄dia' p̄out ipse superius placitando allegabit Et de hoc pōn se super p̄riam Et p̄dia' C. sitie, &c. Ideo ven' inde Jur, &c. Vide Bro. Vad. 513. Thomps. 304. Sim. Plie Rept qđ Emend' oblat' fuer' p al trans, &c. Winch. Ent. 995. Sit Plie & Rept qđ non obtulit sufficiēd' Emend'. 1 Bro. 333. Thomp. 360, 409.

Rej.
Qd' obtulit,
and Issue.

Vide 4 Inst. Cl. Bar. in trans.

General Bar by Arbitrament pleaded.

Actio non, Quia dicit qđ post tempus conspirationis p̄dia' fieri suppoit scilicet (tali die & Anno) apud B. in Com S. tam p̄dia' G. qm idem C. mediatione amicorū suorum posuerunt se in Arbitrium Ordinacōnem & Iudic I. M. & P. Arbitratorū inter ipsum C. & p̄lae G. indifferenter electorum tam de & super procuracione p̄dia' quam de omnibus alijs procuracionibus conspiracionibus transgr & Offensis inter ipsos M. & G. ante (tlem diem, &c.) factis Qui quidm Arbitratores postea eodm (tali die) apud B. p̄dia' Arbitrae fuerunt in forma sequen' videlicet p eo qđ transgr & offens' p̄d p p̄s C. eidem G. fac' ac transgr & offens' p ipsum G. eidem C. fac' ante p̄d (tlem diem, &c.) fuerunt equales in dampno qđ tam p̄dia' G. versus p̄lae C. de omnibus tnsgr & offens' p ipsum

Bar.
Per Arbitrament' in Conspiracy.

P

G.

G. p̄fear T. ante dictum (talem diem, &c.) fact' qđq̄ p̄dia'. T. versus p̄fear G. de omnibus r̄isge & offensis per ipsum T. p̄fear G. ante dēū (talem diem, &c.) factis esset quietus & exoneratus imperpetuum & quod omnes accōnes inde in alterum inter eos extinct' essent & determinat' Et hoc, (&c.) Unde per iudicium, (&c.)

Repl.
Et Issue sur
seo.

Et p̄dia' G. dic' quod ipse p̄ aliqua (&c.) p̄cludi non debet quia dic' quod p̄dia' Arbitratores non fecerunt aliquod tale arbitrium Ordinationem sive Iudicium inter ipsum & p̄fear T. put p̄dia' T. suus allegavit Et hoc per quod inquiratur p̄ patriam, (&c.) Iſo, (&c.)

Note, It is said an Award is no Plea in Attaint, or other Matter of Record; but if the Matter of Record be mix'd with a Matter *en fait*, then it is a good Plea, 13 *Ed.* 4. 5.

Yet by 11 *H.* 7. 13. In Waste it is held no Plea, because the Action is mix'd, nor in any other Real Action; but in forger of *Faits* and other Actions upon Statutes, it is said to be a good Plea.

And tho' an Accord is not a good Plea without a Satisfaction executed in the Whole: yet Arbitrament without Execution is, because an Action lieth thereon. 5 *Edw.* 4. 7. 6 *H.* 7. 10.

Bar.
By Arbitra-
ment in
Debt.

Accord non, Quia die qđ tam ipse p̄d̄ W. qđ p̄dia' H. post p̄dia' decimū diem Marti scilicet primo die Iulii Anno (&c.) apud L. in Com S. posuerunt se in arbitrio ordinationem & iudicium quorundam J. K. & M. Arbitratorum tam
ex

ex parte p̄dia' W. qm̄ p̄fac' H. indiffe-
 rentē electozum tam de debito p̄dia' qm̄ de
 omnibus transgr' (Ec.) inter ipsos (Ec.)
 ante p̄dia' primū diem Julii moꝝ' (Ec.)
 qui quidem arbitratoꝝ accepto super
 se onere arbitrandi in p̄missis eo quod ip̄s
 in tractatu int' p̄dia' W. & p̄fac' H. tunc
 ibm̄ p̄ examinacon eozum inde habie
 inuener' qd. transgr' p̄dia' & p̄fac' H. eidem
 W. ante tempus illud fac' in multum
 exceſſerunt transgr' p̄ ipm̄ W. p̄fac' H.
 factas arbitrati fuerunt ordinaberunt &
 adjudicaberunt de p̄missis quod idem W.
 solveret p̄fac' H. sexaginta solidos & de
 debito illo & de omnibus transgr' p̄ ip-
 sum W. p̄fac' H. ante tempus illud illac
 erga ipsum H. eſſet quietus imppetuū
 & ſitit quod p̄dia' H. de omnibus
 transgr' p̄ ipsum H. eidem W. facis eſ-
 ſet quietus imppetuum & dic' quod ipse
 sexagint' solidos illos p̄fac' H. adtunc &
 ibem solvit. Et hoc (Ec.) Unde petit
 iudiciū, (Ec.)

Actionē non, Onia die qđ post p̄dēum
 tempus trans p̄dia' ſupius ſup-
 poſit ſcilicet (tñ die & Anno) apud R. p̄dia'
 idem M. & p̄dia' B. ex eozum unanimō
 conſenſu & aſſenſu poſuer' ſe in Arbi-
 trariū quorūdam C. D. & E. f. ad ordi-
 nandū & arbitrandū de & concernē oībus
 litibus materiis & controverſiis quibul-
 cunq; que tunc fuer' int' eos p̄ndē,
 Qui quidem Arbitratoꝝ accept' ſu' ſe
 onere arbitrii ordinationis & iudicii de
 & ſup p̄miſſis p̄dictis eis ut p̄fertur

Bar.
 Per Arbitra-
 ment in
 transgres'

submiss' postea scit p̄dia' (tali die & anno) apud R. p̄dia' ordinaverunt arbitra-
verunt & adjudicaverunt int' ipm̄ A. &
p̄fat B. de & super p̄missis eis ut p̄-
fert' submiss', That the Defendant should
pay the Plaintiff 5 l. and should do such and
such Things, tam in plenam satisfactionem
& contentationem cujusdam actionis debi-
tū partes p̄dia' tunc penden qm̄ omnium
aliarū litium materialū & controversiarū
quarumcunq; inter ipsos p̄fat B. & A.
ante submissionē p̄dia' penden, Et idem
A. in factis dicit, That he tender'd B. the
Money (such a Day, Year, and Place,) and
he refused to take it. Et ulterius idem
A. dic', That he performed the rest of the
Award, and shews how, and when, scdm̄
formam & effectum ordinis Arbitrii &
Judicii p̄dia', Et hoc, (&c.) Unde, (&c.)

Repl'

Precludi non Quia dic' quod bene & be-
rum est qđ post p̄dia' tempus, &c. and so
confesses the Submission to the Arbitrament,
as in the Plea, put p̄dia' A. superius
plitando allegavit, Sed idem B. ulte-
rius dic' quod postea & anteqm̄ Arbitra-
tores p̄dia' aliquam ordinationem ar-
bitrium vel adjudicationem int' ipsum B.
& p̄fat A. de & super p̄missis eis ut
p̄fertur sūius submiss' fecer' scit (tali
die & anno) ip̄ idem B. exonerabit
Arbitratores p̄dia' de & ab omni ordi-
natione sive adjudicatione int' ipm̄ B. &
p̄fat' A. in & super p̄missis p̄dia'
eis ut p̄fertur submiss' fiend, Et hoc pa-
rat est verificare, Unde per' judicium &
dampna

dampna sua occasione transgr' p'dicta' sibi adjudicari.

Defendant rejoins, Quod quer' non exonerabit Arbitratores p'dicta' de & ab, (&c.) and Issue joined thereon.

Et p'dicta' D. t, (&c.) Actorum suum veni, (&c.) & quoad venire vi & armis (non cul') & quoad resid' transgr' p'dicta' supius fieri suppōit idem D. dicit quod p'dicta' R. actionem suam p'dicta' inde versus eum habere non debet quia dicit qd. post tempus quo supponitur transgr' p'dicta' fieri scit (tali die & anno) idem D. & p'dicta' R. apud P. posuerunt se in arbitrium ordinationis & judicium C. & S. tam de transgr' p'dicta' qm de & super omnibus aliis t'dsgr' sec' querel' debet' debeat' & demand' inter eundem D. & p'fat' R. ante tunc hit' mot' sive ppetrat' p'edictiq; Arbitratores (accepto super se onere arbitrandi in p'miss') tunc ibidem arbitrat' fuer' ordinaver' & adjudicaver' in forma sequend' videt' quod p'dicta' D. daret p'fat' R. viginti solid' in plenam satisfactionem t'dsgr' sup'aspec' qm omnium aliorum t'dsgr' sectarum querel' debet' debeat' & demand' quos quidem viginti solidos idem D. p'fat' R. tunc ihm dedit juxta formam & effectum arbitrii ordinationis & judicii p'dicta', Et hoc parat' est verificare unde petit judicium si p'edicta' R. actionem suam p'dicta' inde versus eum here debeat, (&c.) — Repl'.

Bar.
Aliter in
transgr'

P'cludi non debet, Quia dicit quod Arbitratores non fecerunt aliquod tale

arbitrium ordinationem sive iudicium de
 & super' talgi' p'dia' put p'dia' D. lutiug
 allegavit, Et hoc pet', &c.

More of this may follow in Debt in Part 4.
*Et vide Thomps. 376. 2 Saund. 292. Bro.
 Red. 116. Bro. Vad. 452. Hansf. 45. Per Ar=
 bitrament puis le darrein Continuance,
 Pl. Gen. 279. 313.*

General Bar by former Judgments
 pleaded.

In Appeal. See *Coke's Entries, fol. 54.*

Def' pleads
 another
 Judgment
 for the same
 Debt reco-
 vered in
King's-Bench.

Action non (&c.) Quia die quod post
 confectiō Bill' p'dia' scilt Termin
 Sed Bill' Anno, &c. 7. p'dia' A. ven in
 Cur' Dni Regis coram ipso Rege apud
 Westm & ptulit in Cur' dcd Dni Regis
 &c. [And so recite the whole Record and
 Judgment] prout p Record' & Process'
 inde in eadem Cur' dicti Dni Regis co-
 ram ipse Rege apud Westm p'dia' exi-
 sten & residen plenius liquet, Cum hoc
 quod idem Def' verificare vult quod pre-
 dia' Script' Obl' Cent' Lib in Record
 recuperation p'dia' supius spec, Et pre-
 dia' Script' Obl' 100 l. unde p'dia' Quer'
 in p'dia' Cur' hic verlus ipm Def' moda
 nari' sunt un & idem Script' Obl' & non
 al' neq' divers', quodq' p'd' A. B. in Re-
 cord recuperation p'dia' supius quer' no-
 minat' & p'dia' A. B. jam quer' sunt
 un & eade person & non al' neq' diversa,
 Et quod p'd' C. D. in Record' recupera-
 tion

tion pzed' supius Def' nominat', Et pzed' C. D. modo Def' sunt un' & eadem pzelon, Et non al' neq; diversa, Et hoc parat est verificare, Unde pef Judic' si pzed' N. J. p un' & eadem Causa action' suam pzed' iterum versus ipm C. D. Here debeat, &c.

By *Ashton* and *Prisot*, he that pleads a Recovery ought to begin at the Original, and not to omit so much as any Continuance, Summons or Severance. 36 H. 6. 5.

If hereupon the Plaintiff suffer a Nonsuit, then it follows thus:

¶ Super quo pzed' N. ad replicand' ad pzed' pfitm pzed' C. supius in Barr' pfitat solemniter exat' non veni nec est pros' breve suum pzed', Ideo cons' est quod pzed' N. & pleg' sui de pros' sint in mia, &c. Quer' noia pleg', &c. Et quod dia' C. eat inde sine die, &c. Cons' est etiam quod pzed' C. recuperet illud pzed' N. 90 s. pmiss' & Custag' suis p ipm circa sex' suam in hac parte sustent' eidem C. p discretion' Justic' hic adjudicat' scdm form' Stat' in hac parte edit' & pvis', Et quod idem C. heat inde execution', &c.

In Coi' Banc' co.

Mia'.

Execution for Defendant.

G. Exec of A. brings Debt sur Obe
versus B.

Def' pleads
another Re-
covery in
Common-
Pleas, and
refers to the
Record in
the King's
Bench, sent
thither by
Writ of Er-
ror.

ff. **A**ction non, Quia die quod diu ante
impetrat brevis Original' pred'
G. scilicet Termino, (Ec.) Anno, (Ec.)
predia' A. in vita sua in predia' Cur' Dñi
Regis de Banto hic scit apud Westm
coram G. C. Mil' & Sociis suis, (Ec.)
p cons' ejusdem Cur' de & super predia'
Scripte Obl' hic in Cur' plat' recuperabit
versus ipm B. tm predia' Gene Libr' de
debo qm 90 s. qui (Ec.) Unde Condia'
fuit put per Record' & Process' inde que
cum omnibus ea tangen virtute cujus-
dam brevis die Dñi Regis de Erro-
corrigend ad psecut pdia' B. plat' G. C.
direct' coram dia' Dño apud Westm a
die, (Ec.) Anno (Ec.) miss' fuer, Et
que in Cur' Dñi Regis nunc coram ipso
Rege virtute pdia' brevis de errore jam
remanent & resident & in suo plen ro-
boze & effectu minime reberlat seu adnul-
lat erit, Et idem Def' ulterius dicit
quod Scriptum Obligatorium hic in Cur'
plat', Et predia' 100 l. in eodem spec ac
pdia' Script' Obl' super quo predia' A.
sic ut pferre recupabit versus ipm B.
pdia' 100 l. & dia' 100 l. in eod' Script'
mentionat' sunt un & idem Script' & un
& ead 100 l. Et non al' neqz divers'
Script' neqz al' neqz divers' 100 l. Obqz
pred' A. cujus Exec. pred' G. modo
quer' est & pred' A. qui recuperabit de-
bitum pred' in Cur' hic est un & eadem
person

Averment of
the Bond,
Money and
Persons.

person & non alia neque diversa, Quod
idem N. & predicta B. versus quem Ju-
diciū predicta in Cur' hic reddit fuit est
un' & eadem pson' & non al' neq; diversa,
Et hoc (Ec.) Unde per judic' si (Judicio
predicta in suo pleno robore & effectu sic re-
manen' & adhuc int' reversat' & adnul-
lat' existen') predicta G. Actionem suam pre-
dicta' p'sus eum habere debeat, Ec. Vide
simile in Abatement, *Rob. Ent.*

N. B. versus E. F.

Actionem non, Quia dicit quod als scit
Term Sed Michis Anno Dñi die
Dñi Regis nunc 7. in Cur' dei d'ri Re-
gis nunc coram ipso Rege eadem Cur'
apud Westm in Com Midd' tunc existen'
predicta N. B. p nomen (Ec.) p C. D. Al-
t'orū suū ven' & tunc protulit in eadem
Cur' quandam billam suam vers' p'fat'
E. F. per nomen, (Ec.) adtunc in cu-
stod' Mare Marese Dñi Regis cor' ipso
Rege existen' de p'ito debi, Et inven-
pleg de p'ox' scit Johem Doe & Ricm
Doe per quam quidam Billam, Idem
N. B. per predicta nomen (Ec.) quereba-
tur de p'efat' E. F. p p'ed' nomen E. F.
als die (Ec.) in custod' Mare Marese sic
ut p'eferte existen' de p'ito qd redderet
ei 300 l. leglis Monet Angl' quas ei de-
huit & injuste detinuit pro eo videt' qd
cum predicta E. F. decimo die Maii An-
no Dñi 1694. apud (Ec.) p quoddam
Scriptum suum Obl' Sigillo ipsius E.
sigillat, Curicq; dcd Dñi Regis tunc
ibidem

Defendant
pleads ano-
ther Reco-
very in Debt
by *Non sum
informatus.*

ibidem ostens' cujus dat fuit eidem die
 & anno cogn' se teneri & firmit' obligari
 p'ed' M. B. in p'dia' 300 l. solvend' eidem
 M. cum inde requisit' esset p'ediac' ta-
 men E. licet sepius requisit', &c. p'ediac'
 trescent' libz' p'efat' M. ad tunc non solvis-
 set sed ill' ei tunc usq; solvere omnino
 contradixisset & ad tunc contradic' ad
 dampnum ipsius M. 30 l. Et inde pro-
 duxit sectam, &c. posteaq; scit die Jo-
 vis — pr' post Octab' Scd' Hillarii —
 tunc pr' sequen' & jam ult' elaps' usque
 quem diem p'ed' E. huit licen' ad bil-
 lam p'dia' interloquend', Et tunc ad re-
 spondend', &c. coram Dño Rege apud
 Westm' ven' tam p'd' M. p' Attor' suum
 p'ediac' quam p'ediac' E. per G. H. Attor' suum,
 Et idem M. petiit qd' p'ediac' E.
 ad Parc suam p'ediac' respond', Sup' quo
 p'dia' E. defend' vim & injur' quando, &c.
 Et idem Attor' p'dia' E. dixit qd' ipse
 non fuit inform' per eund' E. Margem'
 suum de aliquo respons' inde p' eodem E.
 in loquela p'dia' dand', Et nichil aliud ad-
 tunc dixit in barram sive p'clusion' Ac-
 tion' ipsius M. p'dia' per qd' idem M. re-
 man' vers' eund' E. inde indefens', &c.
 Ideo ad tunc & ibm per eandem Cur'
 cons' fuit qd' p'd' M. recuperet vers' p'fat'
 E. debm' suum p'd' necnon 5 l. s. p' damp-
 nis suis que sustinuit tam occasione deten-
 tione debi' p'romis & custag' suis per ip'm
 circa sectam suam in ea parte apposit'
 eidem M. per Cur' dic' Dñi Regis tunc
 ibm' ex assensu suo adjudicat', Et p'dia'
 E. in M'ia, &c. put' p' Record' & Process'
 inde

Non inform'

Judic'.

Prout per
Record'.

inde in dia' Cur' dia' Dñi Regis coram ipso Rege residen manifeste liquet & apparet, Et p̄dicta' E. ulterius dic quod Scriptm' Obl' p̄dicta' in Recoꝝd' judic recuperacōi spec unde idem A. debum p̄dicta' in forma p̄dicta' recuperavit, Et Script' Obl' p̄dicta' per p̄fat' A. modo hic in Cur' p̄olat' sunt un' idemq; Scriptm' & non al' neq; diversa hoc parat' est verificare unde ex qua idem A. debum p̄dicta' per ipsum modo petit' in forma p̄dicta' jamdudum recuperavit idem E. per judicium si p̄d. A. (Recoꝝdo judicii Recuperacōi p̄d in omnibus plen' suis robore vigore & effect' adhuc existen') Actiōi suam p̄dicta' inde Usus cum here debeat, &c.

Averment.

Quer' Repl' nul' tiel Recoꝝd' Recuperacōi debi p̄dicta' &c. Nul' tiel Recoꝝd'.

Vide 1 Saund. 90. Bro. Met. 251, 253. Cl. Aff. 79.

For pleading of a Record, *vide* 1 Inst. 225, 453, 5 Co. 52, 218, 260. 10 Co. 92. Stiles Rep. 22. Yelv. 39. 2 Cro. 817.

Note, That a Record in the King's Bench may be certified to an inferior Court by *Certiorari* and *Mittimus*. 1 Saund. 98, 99.

Vide Saund. 2 Rep. 25, 26, &c. of what Records may be transmitted by the Chancery into the King's Bench.

Auterfoits Bar,

IS a Plea of the same Nature with the former; and therefore it is said, that *Ley Gager in Detinue* is a good Bar in an Action of the Case for the same Goods. 12 Ed. 3. Bro. *Action sur le Case*, 92, & 110. So

So in Account upon Goods delivered, it is a good Plea to say, That in a *Detinue* before brought by the Plaintiff, the Defendant did wage his Law. 2 R. 3. 14 & 19.

In Case for Words of Perjury, Defendant pleads a former Action brought for the same Words; whereupon he justified, and a Verdict and Judgment for the Defendant. *Hern*, 151.

So in Case upon *Assumpsit* to pay 50 s. Defendant pleads, that the Plaintiff brought an Action of Debt, and declared upon an *In simul Computasset*, and that the Defendant then pleaded *Nil debet ꝑ Legem & ꝑfecit Legem*, and avers that the Suit was for the same 50 s. To which the Plaintiff replies, That they were several Debts, and traverses that they are the same. *Idem* 230.

And in Assize it's said, That a *Retraxit* by the Plaintiff in another Assize is a good Bar; but that it is otherwise of a Nonsuit. 15 Ed. 3. *Fitz. Assize* 96.

But if the Plaintiff be once barr'd by Judgment in the same Action, or in one of the like Nature, he shall be also barr'd in another meaner Action.

Yet in *Bro. Bar* 11. 20 H. 12. & 43 Ed. 2. 2 b. in Debt,

It's said, That if the Defendant plead a former Recovery by the Plaintiff in a Plea real or personal without Execution, it is no Bar; because he that recovered may at his Election bring a new Writ.

And *Bro. Bar*. 43. *Auterfoits* recover in Account, Debt, Trespass, and *Humoi* is no Plea, if he says not that he had Execution.

And

And by 4 *Ed.* 4. 54. two Judges for it, and two against it : But agreed, that if a Man recover upon a simple Contract, he shall not have a new Action, because the Duty is changed.

And *T.* 40. *E.* 3. in Trespass the Defendant said, that the Plaintiff *auterfoits* recover'd 40 s. for the same Trespass, and good. *Vide Bro. Judgment* 47.

And 18 *Ed.* 4. 28. *Bro. Joinder in Action*, it's said, That in Trespass upon the Statute of 5 *R.* 2. by three Persons, a Recovery of a third Part of a Moiety against one of them, and Execution thereupon, a good Bar, and so 9 *Ed.* 4. 50.

And so by 4 *H.* 7. 7. three are bound jointly and severally, but Execution is had only against one of them ; yet this shall be a good Bar for the other two.

For Precedents of this Nature, see

Rast. 665. Trespass for Fish taken ; Bar by Judgment upon Verdict for the same Trespass, *Repl' qđ Def' cepit plur' pisces quam in prior' action'*.

So *Co. Ent.* 50. Appeal of *Mayhem* ; Bar by Judgment in Trespass and Assault, *Demurrer inde.* *Vide* 54.

Debt upon Bond ; Bar by a former Judgment upon the same Writing. *Hern* 299. *Ash.* 223, 224.

Hern 357. In *Dower*, to part a former Recovery, &c. *Repl. Qđ prius Iudicium non fuit hit' de eisdem terris.*

And see *Dyer* 299. That it is a good Plea in Debt upon an Action grounded upon a Statute or Judgment, that the Plaintiff had sued out and make Execution upon the Judgment or Statute.

And

And if the Action be grounded on a Personal Contract in Writing, as a Bond, or other Especialty, that the Plaintiff sued the same Obligation once before, supposing the Condition was broken, and was barred therein, 5 Co. 43. *Dyer* 51, 256.

If it be a Debt on a Contract without Especialty, in which Action Wager of Law doth lie; it is a good Plea, that before this Time the Plaintiff brought another Action for the same Debt therein, and that the Defendant waged his Law, and barred the Defendant therein; or that the Plaintiff brought an Action of the Case for the same Debt before, and recovered the same therein. 4 Co. 94.

But that if Debt be upon a Parol-Contract without Specialty, or if it be for Goods sold it is no good Bar, that a Stranger hath made an Obligation to the Debtee for the same Debt. 3 Co. 22. *Fitz. Bar.* 75.

So in Debt, to plead that the Plaintiff upon a **Justices** had a Judgment for the same Debt in the County-Court, it seems is no good Plea, unless Execution be made upon it. 6 Co. 49. *Bro Debt.* 29. See *Lev. Ent.* 212.

So if a Judgment be had upon an Especialty, the Debt upon the Especialty is gone; and if Debt be upon a Contract or Arrearages of Account, and after the Debtee take an Obligation from the Debtor for the Money, the Debt upon the Contract is gone, (but if the Obligation be made by a Stranger, **contra**) for so long as the Judgment is in Force, or the Obligation in Being, the Creditor cannot sue upon the Obligation in the first Case, or the Contract or Account in the last. 6 Co. 45, *Dyer* 21. *F. N. B.* 120. **Recus**

Recuperatio p̄stat' in p̄ior' ac̄tione, &c.
Winch. Ent. 99. 62, 188. Bro. Vad. 76. Tre.
Tro. 163. 1 Lut. 833. 2 Lut. 945, 1414.
3 Lev. Rep. 122, 173, 176, 196, 1 Bro. 19.
Bro. Red. 105. Vidian 19, 45, 46, 166.
Clift. 176, 177, 178, 182, 186, 196. Vide
4 Part Instr. Cl.

General Bar by Statute of Limitations
pleaded.

Statut' de
Limitacon'
plede al Ac-
con' sur le
Case.

Actio non quia dicit qđ per quendam
Actum in Parlamento Dñi Jacobi
nuper Regis Angl', &c. Anno Regni sui
vicesimo primo apud Westm' in Com'
Midd' tunc edit' int' alia inactitat' fuit
authoritate ejusdem Parlamenti quod
omnes Actiones Tr̄sgr' Quare clausum
fregit, &c. (recitand' le Statute) prout per
eundem Actum plenius liquet & appa-
ret, Et idem C. ulterius dicit quod pre-
dict' Sessio Parlamenti finivit vicesima
nono die Maii Anno regni dicti nuper
Regis Jacobi vicesimo secundo, Quod
promission' & assumption' predict' in Parr'
predict' superius fieri suppōit' fact' fuer'
quinto die Junii Anno regni, (&c.)
Quod predict' W. billam suam pred' ver-
sus ipsum C. decimo die Junii jam ult'
pterit primo exhibit' que quidem billa
in forma p̄dict' exhibit' non exhibit' fuit
infra tres annos pr' post finem pred' Ses-
sion' Parlamenti vel infra sex annos pr'
post separales promission' & assumptiones
pred' fact' scđm formam Statuti pred', Et
hoc parat' est verificare, Unde petit judi-
cium, &c. (Pre-

Repl'.

(Precludi non) quia die quod bene & verū ē quod ip̄s idem W. exhibuit Billam suam p̄dictā versus p̄fat' C. p̄dictā decimo die Junii jam ult' p̄terit' prout p̄dictā C. superius inde allegabit, Sed idem W. ulterius die qđ p̄dictā C. infra sex annos ante diem exhibitionis Bille ipsius W. p̄dictā assumpsit super se modo & forma prout idem W. versus eum queritur, Et hoc, (Ec.) Unde, (Ec.)

Rejoinder.

Et p̄dictā C. dicit quod ip̄s ad aliquod tempus infra sex annos pr' ante p̄dictā diem exhibitionis Bille p̄dictā W. non assumpsit super se modo & forma prout p̄dictā W. superius inde versus eum queritur, Et de hoc pon̄ se super p̄riam. Et p̄dictā W. alit', Ec.

Aliter.

Action non, Quia die qđ Billa p̄fat' R. p̄dictā 21 die Nov' Anno regni dñi Regis nunc septimo vers' ip̄m J. P. in Cur' hic primo exhibit' fuit, Quod post causam actionis p̄dictā accredit sex anni & amplius elaps' fuer' ante diem exhibitionis Bille p̄fat' R. p̄dictā, Et hoc, (Ec.) Unde, (Ec.)

Demurrer.

To this the Plaintiff demurs—Et p̄ causis eo qđ per p̄litum p̄red' non apparet an p̄dictā Billa p̄dictā R. exhibit' fuit ante p̄dictā vicesimum primum diem Nov' in p̄dictā p̄lito p̄dictā J. mentionat' necne etiam eo quod p̄dictā J. per p̄litum suū p̄dictā non ostendit quo tempore causa Actionis p̄dictā ult' accredit, Etiam eo qđ p̄dictā p̄litum p̄dictā J. insufficiens est in materia & forma.

De-

Defendant rejoins, — This Action was brought in Debt against the surviving Sheriff of *Bristol*; and the Plaintiff sets forth, That he sued out a *Testatur Cap' ad satisfaciendū* against one *J. D.* and that thereupon the Defendant, and one *T. B.* then Sheriffs, took the said *J. D.* in Execution, and afterwards suffered him to escape, (the Plaintiff not satisfied of his Debt and Costs,) and that afterwards, *T. B.* died by which an Action accrued to the Plaintiff against the Defendant, as surviving Sheriff; and the Defendant pleads the Statute, as above.

The Plaintiff's Counsel argued, That an Action of Debt for Escape was not within the Statute of Limitations, which says, *All Actions of Debt grounded upon any Lending or Contract without Specialty, All Actions of Debt for Arrearages of Rent, shall be brought within Six Years, &c.* And for this he gave two Reasons:

1. Because this Action is not founded upon any Lending or Contract without Specialty, but only a Duty created by Law, without Lending or Contract.

2. That this Action of Debt upon *Escape* is founded upon a Specialty, *id est*, upon a Statute-Law, 1 *R. cap. 12.* and so out of the Statute of *Limitations*; for at common Law no Action of Debt lies against a Gaoler for an Escape out of Execution, but only an Action of the Case, 2 *Inst. 383.* And that an Action of Debt for Arrearages of Rent reserved by Indenture, was not within the Intention of the Statute. *Hutt. 109. Cro. Car. 513.*

The Defendant's Counsel argued on the contrary, and that the Law had made it a Contract; and that the Statute had not distinguished between Contracts in Law and Contracts in Deed; and that it was not merely founded upon the Statute of 1 R. 2. because the writ and Judgment were on Record but upon the Escape; and that the Defendant might have pleaded *Nil debet*, which he could not to an Action founded upon a Record.

But notwithstanding, the Court held the Plea ill, and that this Action was not within the Statute of *Limitations*: But agreed to an Exception taken by the Defendant to the Declaration, for that the Plaintiff had only shewed that he sued an Exception, upon which *Hill* was taken and escaped, but had not shewn that the Plaintiff had recovered any Judgment as he ought; for that the Plaintiff might have pleaded *Nul tiel Record*, as in 8 Co. 142 &c. See 1 Saund. Rep 36, 37. *Iones versus Pope*.

Thereupon the Plaintiff pray'd to discontinue his Action, which was granted him upon Payment of Costs, &c.

Aliter.

A Ction' non, Quia dic' qd Billa p'cedia' ipsius J. exhibit fuit 8 die Aprilis Anno regni Dni Regis nunc vicesimo & non antea Qd causa Accionis sup' quam p'dia' J. vers' p'dia' R. superius narravit non accrebit infra sex annos pr' ante exhibit'ion' Bille p'cedia', Et hoc, (Ec.) Unde (Ec.)

To this the Plaintiff demurs generally, and the Defendant rejoins.

This

This was in an Action of Debt to stand to Arbitrament or Umpirage to be made under Hand and Seal, and brought for 15*l.* which the Umpirator accordingly awarded the Defendant to pay the Plaintiff in full Satisfaction of all Debts, Accounts, and Demands

The Question was, Whether this Action of Debt upon Arbitrament was within the Statute of *Limitations*, or not?

1. The Plaintiff's Counsel said, It was Debt upon Specialty under the Hand and Seal of the Umpirator, and so out of the Intent of the Statute.

2. The Defendant said, It was no Specialty, because the Submission being not by Specialty, the Defendant might wage his Law, which he could not do against a Specialty. 1 *Roll* 107. It was answered to be a good Specialty to prevent the Limitation of the Action, and compared it to an Account; where, if the Plaintiff declares upon Receipt by the Defendant's Hands, the Defendant might wage his Law but not when he declares upon a Receipt by the Hands of another: Also that the Statute only intended Debt for Arrearages of Rent upon a Lease Parol, (*Hutt.* 109.) and not by Indenture.

3. That all Actions of Debt without Specialty generally are not limited, but only all Actions of Debt grounded upon any Lending or Contract without Specialty.

4. As to an Objection, That it was grounded upon a Contract raised by the Law; it was answered, That all Actions of Debt are founded upon a Contract, raised either *en Fait*, or by Construction of Law, and that such an

Exposition would limit all Actions of Debt without Specialty generally, which was not the Intention of the Statute, but only such Actions which were grounded upon any Lending or Contract *en Fait*. And that this was not so grounded, but *Debitum quasi ex contractu*; for which the Law gives an Action of Debt, although there is no Contract between the Parties.

And so it is of a Recovery in Trover or Trespass in the County-Court or Court-Baron. So of Debt, which is *debitum ex delicto*, for an Amercement in a Court-Baron: So of Debt of 3 l. for a Pound-breach, according to the Custom of the Manor. 11 H. 7. fo. 14. against which the Defendant may wage his Law, and that these rarely happen'd. But Debt upon Contracts *en Fait* being so frequent, the Makers of the Statute intended to limit the one, without Regard to the other, *Et ad ea quæ frequentius accidunt Jura adaptantur.* Hob. Rep. 109.

Upon the whole the Court resolved, That it was a sufficient Specialty to prevent the Statute, and that it was not grounded upon any Lending or Contract; and Judgment for the Plaintiff. Whereupon the Defendant brought a Writ of Error, but was nonsuited. See 2 Saund. Rep. 62, 63, &c. *Hodsdon versus Harridge.*

1 Saund. fo. 38. Debt for Escape upon the Statute of 1 R. 2. cap. 12. and Debt for Arrearages of Rent reserved by Indenture. Action upon the Statute of 2 E. 6. cap. 13. Of *Tythes*, &c. are not within the Statute of Limitations.

2 Saund.

2 *Saund.* 65, 96, 67. An Arbitrament under the Hands and Seals of the Arbitrators, is a Specialty not limited by the Statute.

Fo. 66. Actions of Debt for Arrearages of Rent, reserved upon a Lease by a Specialty, are not within the Statute.

Fo. 66, 67. Actions of Debt founded upon Contracts *en Fait*, and not Actions of Debt founded upon Contracts rais'd by the Law, are within this Statute and limited by it.

Fo. ibid. Actions of Debt upon an Arbitrament, is not founded upon a Contract within the Intent of this Statute.

Fo. 97. Action *de rationabili parte bonorum*, altho' it is no other than an Action of *Detinue*, is not within this Statute, nor limited by it.

Fo. 120, 121. The Privileges by reason of Infancy, and other Impediments, are saved in an *Action on the Case* upon *Assumpsit* by this Statute; and the said Action is within the Equity of the saving Clause of it, although it is only named in the limiting Clause.

Fo. 121. An Infant may pursue his Action at any Time within Age, although the Years limited by the Statute are past during his Infancy, and he needs not to tarry till he be of full Age.

Fo. 125, 127. The Exception in the Statute, *Of Accounts which concern Merchandize, &c.* (that they may not be limited) extend only to Accounts current between Merchants; but not to Accounts stated between them.

And that *Actions upon the Case*, for Money due upon a Bargain between Merchants for Merchandizes sold, are limited by the Statute,

and not within the said Exception; for Accounts only are excepted, and not Contracts. *Idem* 125, 126, 127. *Vide* 2 *Ven.* 256. 1 *Bro.* 75, 118. *Bro.* 93. *Bro. Red.* 99. 101. *Bro. Met.* 51. *Bro. Vad.* 113. *Vidian* 25. 26. 1 *Mo. Int.* 29. 2 *Mo. Int.* 138. *Rob. Ent.* 442. *Thomp.* 61 *Gl. Ass.* 195, 181, &c.

*General Bar by Disability of the Plaintiff
pleaded.*

Outlawry.

IN Debt upon Bond, the Defendant imparled till the next Term; afterwards he may plead that the Plaintiff is outlaw'd: And it seems that the Reason is, because the King shall have the Debt upon the Bond. But 'tis otherwise in Trespass, Battery and Debt upon Simple Contract. 16 *Ed.* 4. 4. *a. per Brian.*

Bastardy.

So in *Mortdancestor*, after Imparlanee, the Tenant may plead Bastardy against the Demandant. 22 *Ed.* 4. 36. *a. per Hussey.*

Note, That in Debt upon Contract the Defendant pleaded Outlawry after Imparlanee. The Plaintiff replied, *Nul tiel Record*, and at the Day the Defendant failed therein, and Judgment final was given. 1 *Cro.* 556. 2 *Cro.* 448. But if the Outlawry had been reversed after the Plea, 'tis otherwise.

For in Debt upon Bond the Defendant pleaded Outlawry in Bar: the Plaintiff replied, *Nul tiel Record*, and Day given; and in the mean Time the Plaintiff reversed the Outlawry, and thereby it became *Nul tiel Record ab initio*: And the Replication was good notwithstanding, it being pleaded in Bar, and true at the Time of pleading thereof; and the Defendant

pendant brought not in the Record by reason of the Reversal. Judgment final was not given, but a Respondi Ouster. *Yelv.* 36. *Dyer* 288. 8 Co. 142. 1 *Brownl.* 833. 1 Cro. 566. 2 Cro. 484. 3 Cro 270.

For the Manner and Form of pleading *Outlawries*, and when it shall be in Disability of the Person, and when Bar of the Action, see before *Abatement in Disability of the Plaintiff*.

A. versus B.

ff. **Q**uando, (Ec.) Et dic' qđ p'edict' A. (Accōn) non) quia dic' qđ quidm C. D. als scit' Term Sed Hic anno reg' Dñi Regis nunc septimo implitabit p'edict' A. in Cur' dicti Dñi Regis de Banco hic de p'ito debi super demand 50 l. p'dictusq; A. p' ea qđ non ven' in p'edict' Cur' dia' Dñi Regis de Banco p'edict' p'fat C. D. responsur' secundum legem & cons' hujus Regni Angl' in exigend' p'ois fuit ad Utlaganđ in London, Et ea o'cōne postea scit' die . . . pr' post festum . . . Anno regni dicti Dñi Regis nunc septimo supradicto in London p'dict' ad sextam p'edict' C. D. utlagat' fuit put p' Record & Process inde in p'dict' Cur' dicti Dñi Regis de Banco p'dict' hic residen' plenius liquet & apparet, Que quidem Utlagaria adhuc in suo pleno robore & effectu remanet mīd' revesat' seu adnullat', Et hoc parat' est verificare, Unde pet' Judiciū si p'edict' A. accōnem suam p'dict' inde vers' ip'm

Utlary in Bar pleaded briefly,

Averment.

ip'm B. here seu manutenere debeat, &c. Cum hoc qđ idem B. verificare vult qđ pđia' A. in h'ebi & Parr' pđia' superius specificat' ut querens versus p'fat' B. superius nōiat', Et idem A. in pđia' Recordi Hilagarie pđia' s'ic nōiat' est una & eadem p'son & non alia neq; diversa.

Vide ante T it. *Abatement.*

Aliter in Bar pleaded at large.

M. versus M.

Original Ret.
15 Pasche

A Etōn' non, &c. Quia dic' qđ quidam R. S. alias scit 10 die Junii anno regni Dñi Willi nunc Regis Angl', &c. septimo p'scut' fuisset quoddam h'ebe Original' dicti Dñi Regis de debo tunc Dic' Somset' direct' versus p'fat' M. per nōen, (&c.) retornabile coram Justic' dicti Dñi Regis de Banco pđia' a die Pasche in quindecim dies tunc p' sequen' supponen' p idem h'eb qđ idem M. p'fat' R. S. debuit & injure detinuit 50 l. Ad quem diem coram G. C. Mil & Sociis suis dicti Dñi Regis de Banco hic scilicet apud Westm pđia' ven' pđia' R. S. per A. B. Atorn' suū, Et obtulit se quarto die vsus p'fat' M. de pđia' p'lico & ipse non ven' d'casq; tunc Dic' pđia' Com S. p'textu h'is pđia' coram p'fat tunc Justic' apud Westm pđia' ad diem ill' retorn' qđ p'p'dia' M. nichil fuit in ballia sua ubi aut per quod sum potuit, Quo p'textu quoddam h'eb dic' Dñi Regis de Capias versus

Retorn' Vic.

Capias

versus p̄fat' M. tunc Dic' Comd S. p̄re-
 dia' direct' retornabile coram p̄fat' tunc
 Justic' apud Westm̄ p̄dia' a die Pasche
 in quinq; Septianas tunc p̄r' sequen' ad
 sex' p̄dia' R. S. de p̄lito p̄dia' in hac
 parte ab eadem Cur' de Banco emana-
 vit, Ad quem diem coram p̄fat' B. T. &
 Sociis suis Justic' dia' Dñi Regis de
 Banco hic scit apud Westm̄ p̄dia' ven
 p̄dia' R. p̄ Altozñ suū p̄dia' & obtulit
 se quarto die dñus p̄fat' M. de p̄dco pla-
 cito & ipse non ven' dñusq; tunc Dic' ad-
 tunc & ibm p̄textu ejusdem h̄is retozñ
 qđ p̄dia' M. non fuit invent' in ballia
 sua, Ad quem diem quoddam b̄ve de
 alias Capias adtunc & ibm p̄fat' tunc
 Dic' S. direct' retornabile coram p̄fat'
 tunc Justic' apud Westm̄ p̄dia' in Cra-
 stino Sec' Trinitatis tunc p̄r' sequen'
 versus p̄fat' M. ad sex' p̄dia' R. S. de
 p̄dicto p̄lito in hac parte ab eadem Cur'
 de Banco emanabit & ipse tunc non ven'
 dñusq; tunc Dic' adtunc & ibm p̄textu
 ejusdem h̄is retornabit qđ p̄redia' M.
 non fuit invent' in Ballia sua Qua de
 causa quoddam b̄ve dicit Dñi Regis de
 Plur' Capias in hac parte eidem tunc
 Dic' S. direct' retornabil' coram p̄fat'
 tunc Justic' apud Westm̄ a die Sec'
 Trinitatis in tres Septianas tunc p̄r'
 sequen' versus p̄fat' M. ad sextam p̄re-
 dia' R. de p̄dicto p̄lito in hac parte
 ab eadem Cur' de Banco emanabit, Ad
 quem diem coram p̄fat' tunc Justic'
 apud Westm̄ p̄redia' ven' p̄redia' R. p̄
 Altozñ suū p̄redia' & obtulit se quarta
 die

Ret' quinque
Pasch'.

Retorn' Vic'.

Alias Cap'.

Retorn' Cro'
Trin.

Retorn' Vic'.

Plur' Cap'.

Retorn' tres'
Trin'.

Retorn' Vic'

Exigent.

Ret' Menſe
Mich'.Vic' ret' Ex-
gent'.

Primo.

Secundo.

Tertio.

Quarto.

Quinto.

Utlagat' per
Coron' Com'.

die verſus pſat' M. de predicto plito, Et
ipſe ſolempnit' exact' non veni, Idemq;
tunc Vic' S. pretextu predicta' h'is de
plur' Cap' adtunc & ibi retornabit qd
predicta' M. non fuit invent' in Ballia
ſua Sur' quo quoddam breve de Exigi
ſae in hac parte verſus pſat' M. ei-
dem tunc Vic' S. direct' retornabit co-
ram eiſdem tunc Juſtic' apud Weſtm
predicta' a die Sed Michis in un' Men-
ſem tunc pr' ſequen' ad ſea' predicta' R.
ad eadem Cur' Dñi Regis de Banco
emanabit, Ad quem diem coram pſat'
tunc Juſtic' apud Weſtm predicta' ven' pre-
dicta' R. p' Retorn' ſuū predicta', Et C. D.
Arm' tunc Vic' predicta' Com' Soms pre-
textu ejusdem brevis adtunc & ibi re-
tornabit quod ad Com' ſuū tent' apud
Caſtrum Taunton in Com' S. predicta'
(tali die) predicta' M. primo exact' fuit &
non comperuit, Et ad Com' ſuum pro
Com' predicta' tent' apud Caſtrum T. (ta-
li die) predicta' M. ſecundo exact' fuit & non
comperuit, Et ad Com' ſuū tent' pro Com'
pd apud (Ec.) tali die (Ec.) pd M. tertio
exact' fuit & non comperuit, Et ad Com'
ſuū tent' p' Com' predicta' apud (Ec. tali
die, Ec.) predicta' M. quarto exact' fuit &
non comperuit, Et ad Com' ſuū tent' pro
Com' predicta' apud (Ec. tali die) predicta'
M. quinto exact' fuit & non comperuit,
Ideo p' Judic' E. J. G. H. J. K. &
L. M. Coron' dicti Dñi Regis pro Com'
pdict' idem M. Utlagat' fuit prout per
Record' & Proceſſ' inde in dict' Cur' dict'
Dñi Regis de Banco hic residen' ple-
nius

nus liquet, Que quidem Utlagat' ver-
sus pſat' M. in forma pſia' promulgat'
& hic' adhuc in ſuis plen' robore vigoze
& effectu remanet mie reverſat' ſeu ad-
nullat', Et hoc parat' eſt verificare, Un-
de per' Judiciu' G. pſ M. dummodo ſic
Utlagat' exiſtit Actionem ſuam pſ ver-
ſus here debeat, &c.

Vide 1 Bro. 7. 296. Thompſ. 8. 9. 206.
Rob. 91. 92. 213. 1 Mod. Int. 205. 2 Ven. 281.

As to Outlawry you may obſerve further :

THat it is no Plea againſt ſuch as ſue *en Outlawry*, no
Auter Droit, as Executors and Admini- Bar againſt
ſtrators. So in an Action brought by Mayor ſuch as ſue in
and Commonalty, Utlary in the Mayor is the Right of
on Plea. *Co. Lit.* 128. another, as
Executor, &c

Yet ſome have held, That Excommunica-
tion may be pleaded againſt an Executor, &c.
Vide. 31. *Ed.* 4. 49.

In Attaint, Utlary of the Perſon is no In Attaint.
Plea. 2 *H.* 7. 7.

In Attaint upon false Verdict in an *Aſſize*,
the Tenant in the *Aſſize* may not plead Ut-
lawry in one of the Plaintiffs, becauſe he had
admitted him to be answered in the *Aſſize*.
2 *H.* 7. 7.

Utlary in *Cheſter* and *Durham* ſhall not Utlary in
diſable the Plaintiff in any Court at *Westmin- the County-*
ſter. Ibid. *Palatine.*

In a Writ of Error to reverse an Outlawry, Utlawry to
Utlary in the ſame Suit, or at the Suit of any a Writ of Er-
Stranger, is no Plea in Disability of the Plain- ror.
tiff; for that if he was diſabled in that Suit,
if

if he be outlawed at several Mens Suits, he shall never traverse any of them. *Co. Litt.* 128.

In Appeal.

In an Appeal brought by one as Heir, it was held a good Plea to say, *He was outlawed.* 22 E. 4. 40.

Utlary ought to appear on Record.

Before the Plaintiff or Demandant shall be disabled by Utlary, it ought to appear upon Record; and the Judgment after the *Quinto exactus* given by the Coroners in the County-Court is not sufficient, until the Writ of *Exigent* be returned, and the Outlawry appears on Record. 2 H. 7. 7.

When Outlary comes generally.
&c.

Outlawry in an Action personal, comes only to an Action personal in respect of the Person; but Outlawry in Felony comes to the Action generally. 13. H. 6. 19.

Appearance before the *Quinto exactus*.

Co. on Litt. 128. b. says, There are two Sorts of Appearances before the *Quinto exactus* to avoid an Outlawry; that is to say, *Appearance en Fait*, and *Appearance en Ley*: *Appearance en Fait* is when the Party renders himself; *Appearance en Ley*, is by purchasing a *Supersedeas* out of the Court where the Record is, which is an Appearance upon Record; and therefore although it be not delivered to the Sheriff before the *Quinto exactus*, yet it shall avoid the Outlawry.

En Fait.
En Ley.

Pardon purchased after Outlawry pleaded.

And that if after Utlary pleaded, the Plaintiff purchases his Charter of Pardon; because the Charter has restored him to the *Ley*, the Defendant shall answer. Therefore note the Diversity, that it shall not abate the Writ, but disable the Plaintiff until he obtain his Charter of Pardon. *Id. ib.*

Also

Also he says, That Outlawry may be reversed two manner of ways, *id est*, by Plea, and by Writ of Error. Outlawry reversed.

By Plea, when the Defendant comes in by the **Capias** **Utlagat'**, he may reverse it by Matter apparent, as in respect of *Supersedeas*, Omission of Process, Variance, or Matter apparent in the Record; yet some hold, that in another Term he is put to his Writ of Error. By Plea.
By Writ of Error.

But for Matters of Fact, as Death, Imprisonment, Service of the King, &c. he is put to his Writ of Error, except it be in case of Felony, and there in Favour of Life he may plead it.

But although Imprisonment be a good Cause to reverse an Outlawry, yet it ought to be by Process of Law, and unwillingly, and not by Consent or Covin; for such Imprisonment shall not avoid the Outlawry, because 'tis his own Act. *Co. Lit. 259. b.* Imprisonment pleaded.

In 1 Hen. 7. 13. One outlawed of Felony was brought to the Bar to tell wherefore he should not have Death; and he pleaded, That he was imprisoned in **Castro Oxonie** **tempore Utlagationis**, and said not under whose Custody, nor in what County *Oxon* was, nor took Averment, **Et hoc, &c.** It was held no Plea. Uncertainty, and no Averment.

If one be outlawed by the Name of *J. S.* generally, he shall not be received to say, That there are two *J. S.*'s of *D.* elder and younger; but he shall have his **Indemptitatem nominis.** 21 E. 4. 54. Misnomer avoided.

It's said, That if one be by **Cap' Utlagat** in Felony by the Name of *J. S. Gent.* when he is a Yeoman, if he do not appear and answer, Outlawry avoided for Mistake of Title.

swer, he may avoid it by Plea : But if he appear and answer to the Name of Gentleman, he shall not avoid it after the Plea. 1 *Ed.* 4. 2. *b.* 10 *Ed.* 4. 16. 18 *Ed.* 4. 4.

Party put to
Writ of Er-
ror.

It is said in 39 *H.* 6. 1. That if the Addition of Name or of a Vill be omitted, or no Proclamation be in the County where he dwells, &c. yet the Outlawry should not be avoided by Plea ; but the Party is put to his Writ of Error.

In 8 *H.* 6. 37. the Defendant in the same Term came in Person, and annulled an Outlawry, for that it was not named of what County he was.

See the new Rules for reversing Outlawries In the Common Pleas 'tis said the Clerk of the Judgments does now reverse them.

Bar. For that
the Plaintiff
is attainted
of Felony.

Action' non, Quia dic' qđ p quan-
dam Inquisitionem capt' apud
Castrum N. in Com' N. (tali die & an-
no) coram J. D. Mil un' Justic Do-
mini Regis ad p'sta coram ipso Rege
tenend' assign' & J. P. Mil un' Justic
dicti Domini Regis de Banco Justic
ejusdem Domini Regis ad Gaolam
Castri sui N. de Prisonar' in eadem
existen' deliberand' assign' per sacrum
duodecim p'horum & legum hominum
de Com' p'dict' compert' & p'sentat' fuit
qđ p'dict' A. B. p' nom' (Ec.) tali die &
anno in regia via apud F. vi & armis
videl' gladiis baculis & cultellis in
quendam C. D. in pace Dei & dicti
Dñi Regis ibm existen' insule fec' & ip-
sum

sum verberabit & maletractabit ita quod
de vita ejus despiciat ac duas Annu-
las (Anglice Gold Rings) ad valenc' vi-
ginti solidor' & viginti lib in pecuniis
numerat' de denar' bonis & catallis ip-
sius C. a persona ipsius C. adtunc &
ibm felonice cepit & asportabit contra
pacem dic' Dñi Regis nunc coram &
dignitat' suas, &c. put p eandem Inqui-
siconem plenius apparet p qua quidm'
felonia idem M. comissus fuit Prison-
ded Dñi Regis Castri sui R. ibm salva
custodiend' quousq', &c. posteaq' scit
pdict' 19 die Augusti anno 6. supradicto
coram Justic' pdict' apud Castrium R.
qd' predict' M. dictus fuit ad barram p
tunc Vic ejusdem Com' in propr' psona
sua ac allocut' qualiter se vellet de felo-
nia predict' acquietari dixit qd' ille in
nullo fuit culpabilis, Et de illo de bono
& malo posuit de sup' patriam, Sup quo
ven' inde Jur', &c. Et Jur' inde exact'
ven' qui ad veritat' inde dicend' elect'
triat' & jurat' dixer' super sacrm' suu' qd'
idem M. fuit Culpabilis de felonia pñ
prout p indictament' pñ superius suppon'
p quod Cons' fuit p Cur' ibm qd' idem
M. suspenderete p collum quousq', &c.
Posteaq' certis de causis eidem Justic'
ibm specialit' moven' idem M. remitte-
batur Prison' dic' Dñi Regis Castri sui
pdict' quousq', &c. prout p Recor'd inde
plenius apparet, Et idem R. S. die
qd' Judiciu' pdict' adhuc remanet & exi-
stet in suo roboze & effec' minime reboeat'
sive annihilat' aut p dem' Dom' Regem
nunc

nunc pardon, Et hoc parat est verificare,
Unde per' Judicium si predict' N. duram
attinetur' predict' actionem suam predict' ver-
sus eum here debeat, &c.

Vide Clift. 190.

In Michis 18 Car 2. R^s Levens ver-
sus Harridge & Ur'.

Note, Defen-
dants plead
that their In-
testate was an
Alien.

THE Plaintiff brought an Action of Debt
for Rent of a Messuage against the De-
fendant and his Wife, as Executors of R. Leve-
mere, upon a Lease made to the said Leve-
mere — The Defendants pray Oyer of the
Indenture, and then pleads that the Intestate
was an Alien Artificer, and that the Lease was
therefore void. 1 Saun. Rep. 5, 6.

The Plaintiff demurs; and the Exception
was, that the Defendants did not aver that the
Messuage demised was a Mansion-House,
which was the Intent of the Statute, for that
it might be a Barn or Stable, &c. of which
Opinion was Twisden and Windham. Keeling
said it should be intended a Mansion-House,
prima facie, and the Plaintiff might have
replied it was not: Moreton Hesitavit. And
the Defendants fearing the Judgment would
go against them, paid the Plaintiff the
Rent and Charges, and so no Judgment was
given.

Quibus lectis & auditis iidem R. &
J. dic qd predict' N. Action' suam predict'
inde versus eos here seu manutenere
non debent qui dic qd in Statut' in
Parliament' Dñi Henrici nup Regis
Angl

Angl' oravi apud Westm' anno Rñi sui
 32. tent' edit' (int' al') ordinat' fuit au-
 thoritate ejusdem Parliamenti qđ om-
 nes dimiss' alicujus Domus manconal'
 sive Shope infra hoc Regnū aut aliqua
 Regis dominia concess' (Anglice made)
 alicui Alienigene Artifici (Anglice Ar-
 tificer) aut Opifici (Anglice Handicrafts-
 man) extra die Dñi Regis obeisanciam
 nat' mid' indenizat' existen' (Anglice not
 being a Denizen) ab & post festum Scđ
 Michis Archi extunc pro sequen' post
 ediconem Alas pdia' vacue & nullius
 effectus forent, Et iidem R. & J. ulte-
 rius die qđ Indentur' pdia' in narr'
 pdia' menconat' fac' fuit p pdia' R. J.
 prefat' R. L. pdia' 26 die Nov' Anno
 Rñi dec' Dñi Regis nunc 15. apud pre-
 dia' Paroch' Scđ Martini in Campis
 in Com' pdia', Odoz pdia' R. L. tem-
 pore dimiss' & confeccon' Indentur' in
 narr' pdia' supius menconat' fuit Alie-
 nigena (Anglice a Stranger) & artifex
 extra die Dñi Regis nunc obeisanciam
 nat' & mid' indenizat' videlicet apud Pa-
 ris in Regno Francie, Et sic iidem R.
 & J. die qđ dimiss' pdia' ac Inden-
 tur' pdia' in Narr' pdia' menconat' eidem
 R. L. p pdia' R. sic ut prefertur fac' vir-
 tute Alas pdia' vacui & nullius effectus,
 debent, Et hoc iidem R. & J. parat'
 sunt verificare, Unde pet' Judic' si predict'
 R. accōd' suum pdict' inde vers' eos ha-
 bere seu manutenere debeant, &c —
 Quer' demur', Et Def. jung' in moras
 R. Trin

Trin 18 Car' 2. Ho 133. Vide Clerk's
Assist. 133.

Note, Issue if one be an Alien. *Hern* 362.

For that the Plaintiff is a Bastard.

Defendant
pleads, that
the Person
from whom
the Plaintiff
derives Title
was a Bastard

Repl', Non
fuit Bastarda

ff. **A** Etion, &c. Quia dic quod ubi
p'd' M. suppon' ius Monerii pre-
dict' cum p'cin sibi de p'dict' M. me-
dium p'dict' M. descendere debet eadem
M. Bastarda fuit per quod nullum ius
p' medium p'dict' M. stat M. descendere
potuit, Et hoc, (&c.) Unde, (&c.)

Et p'dict' M. (dic p'cludi non debet)
Quia dic q'd p'd' M. Soror J. &c. legitima
fuit & non Bastarda put p'd' C. iustus
allegabit, Et hoc, (&c.) Ideo rii, &c.

That the De-
mandant is a
Bastard.

ff. **E** T p'dict' T. H. p' M. B. Accor'd
suum v'd' & defend' ius suum quan-
do, &c. Et dic q'd p'dict' J. heres p'dict'
T. C. esse non potest quia dic q'd idem
J. Bastardus est, Et natus fuit apud
C. in Com p'dict' in Dioces D. Et hoc
parat' est verificare v'is & modis quibus
convenit ac put Cur Reg hic cons', Unde
per Iudicium si p'dict' J. ut fil' & Heres
p'dict' T. C. Accor'd suam p'dict' versus
eum habere debeat, &c.

Repl', Qd'
est Litt'imus.

Et p'dict' J. dic quod ipse objectione
p'dict' ab Accor'd sua p'dict' h'nd' repelli
non debet quia dic q'd ipse est Litt'imus
& non Bastardus put p'dict' T. H. supius
ei objecit, Et hoc parat' est verificare ubi
&

Et quando ac prout Cur' hic cong, &c. Et
 pres. C. N. Mir', Et quia humoi cause
 cognitio ad forum spectat Ecclesiasticum,
 Ideo proclam publica hic facta est qd om-
 nes plone, (&c.)

Vide Rast Ent. fol 279 b. Idem 105,
 289, &c. 1 Bro. 6. fficin. Brev. 15, 16.
 Excommunicat. Plac. Vidian 42. Bro. Red 100.
 Vide ante Tit. *Abatements*.

General Rules to be observed.

IF the Defendant have none of these last
 mentioned Pleas, he must either plead the
 General Issue, or some other Special Matter
 whereby to Bar the Plaintiff in his Action

Much might here be said concerning Gene-
 ral Issues, and Matters to be given in Evi-
 dence; Also for Precedents for several Sorts of
 Issues, which are difficult enough in the draw-
 ing up. But these I will refer to a proper
 Head for that Purpose.

Issues refer-
 red to a pro-
 per Head.

Likewise such Pleadings as relate to Execu-
 tors and Administrators, I will place by them-
 selves.

Pleas of
 Executor
 and Admi-
 nistrators.

And here I shall take Notice, That there are
 many Heads, both ancient and modern, un-
 der which Counts or Declarations are or may
 be comprehended;

As { *Account.*
Admeasurement.
Annuity.
Appeal.
Affize.
Attaint: And many more

All which require their particular Pleas or Bars, and would swell into a large Volume ; therefore I shall chiefly insist upon those which are most in Use ;

As {
Case,
Covenant,
Debt,
Detinue,
Quare Impedit,
Replevin,
Trespass, and
Waste.

But before I enter into these, it will be proper to set down some Rules concerning Pleas in general.

Pleadings
strongly ta-
ken against
the Pleader.

1. And First, It is to be observed, that the Pleadings of every Man shall be taken most strongly against himself ; for every Man is presumed to make the best of his own Case.

Court will
not direct
how to plead.

2. The Court will not direct any Person how to plead, although the Matter be difficult, and though they be moved to do it, but will bid them plead it at their own Perils ; because Counsel is to advise how to plead, and the Court is only to judge of the Pleadings, whether they be good in Law or not.

Council is to
advise it.

Issuable Plea.

3. When the Court doth order the Defendant shall plead, it is intended he shall plead an Issuable Plea ; for every Plea that a Man pleadeth ought to be triable, otherwise the Cause can have no End.

Plea direct.

4. Every Plea must be direct, and not by Way of Argument or Rehearsal, and every Man

Man must plead such Pleas as are pertinent for him, according to the Quality of his Case.

5. Pleadings which only amount to the General Issue, are to be allowed, but the General Issue is to be entered.

6. Where the Defendant may plead the General Issue, he ought so to plead, that the whole Matter in Question may once be tried.

7. The Plea must answer all the Matter contained in the Declaration, or else the Plaintiff shall have Judgment, altho' the Declaration be nought in some Part of it; for albeit the Defendant might have demurred to the Declaration, yet not doing it, it shall be intended he had no Cause.

8. When a man is authorized to do any Thing by the Common Law, by Grant, Commission, Act of Parliament or Custom, he ought to pursue the Substance and the Effect of the same accordingly.— Yet where the Defendant is not constrained to plead a Special Plea, he may plead General Issue proper for the Action brought, and give the Special Matter in Evidence of which more hereafter in *Title Issues*.

9. In many Cases, for a voiding of Tedioufness, General Pleadings are allowed' and the Particular shall come on the other Side, as if the Condition of the Obligation be to perform all the Covenants in an Indenture; if all the Covenants be in the Affirmative, the Defendant may generally plead Performance of all; but if any be in the Negative, to so many he must plead specially; so if any of them be in the Disjunctive, he must shew which of them

General If sue.

To the Matter in Question.

Plea must answer the Declaration.

Authority to be pursued.

General Pleadings allowed, and when.

Covenants Affirmative

Negative.

Disjunctive.

he hath performed; so if any of them are to be done upon Record, he must shew it specially. *Co. Litt.* 303. 8 *Co.* 133. 9 *Co.* 25, 61. 10 *Co.* 100.

Surplusage. 10. It's said *Surplusage* shall never make the Plea vicious, but where 'tis contrary to the Matter before.

Double Plea. Yet every Plea ought to be single and certain; for that Plea which doth contain Duplicity or Multiplicity of distinct Matter, to one and the same Thing, whereunto several Answers (admitting each of them to be good) are required are not to be allowed; so where the Defendant pleadeth Two Matters, each of them being sufficient Bar to the Action, unless they be such as one of them do depend upon the other; and then if the Defendant may not have the last without the first, both may be admitted: Yet when the Issue is taken by the Plaintiff upon the One, he cannot then have Advantage of the Insufficiency of the Plea, for he hath waived the other. 11 *Co.* 52. *Kel.* 37. See after *Protestando*, &c. 1st. *Ventr. Rep.* 48, 272. 2d. 68, 198.

Thing rests in my own Notice. 11. Where a Thing rests in my own Notice, I must plead this particularly, otherwise not.

Inducement or Conveyance to Matter. 12. That which is alledged by way of Inducement, or Conveyance to the Substance of the Matter, needs not to be certainly alledged, as that which is of the Substance it self. *Co. Litt.* 303. *Plow.* 81.

General Allegation. 13. Where one comes in by Act of Law, the General Allegation sufficeth. 10 *Co.* 94.

Things Spiritual. 14. Things Spiritual may be pleaded generally; and the Proceedings and Sentences in the

the Ecclesiastical Court may be alledged briefly. *Co. Litt.* 303. *Plowd.* 65.

15. Where the Plea consists of Matter infinite, it may be pleaded generally. 3 *Cro.* 749 Matter infinite.

16. All necessary Circumstances implied by the Law, need not be expressed in the Plea: As in the Plea of a Feoffment of a Manor, Livery and Attornment are implied. *Co. Litt.* 303. Circumstantial Matter.

17. But when any Special or Substantial Matter is alledged by either Party, that ought to be Specially answered, and not to be passed over by a General Pleading. *Co. Litt. ibid.* Substantial Matter.

18. So Matters of Record, especially when they are the Foundation or Ground of the Suit of the Plaintiff, or the Substance of the Plea, must be certainly and truly alledged, otherwise where 'tis but a Conveyance. *Co. Litt. ibid. Plowd.* 65. Matters of Record.

19. General Estates in Fee Simple may be generally alledged, but the Commencements of Estates in Tail and other particular Estates must be shewed, unless in some Cases where they are alledged by Way of Inducement, and the Life of Tenant in Tail, or for Life, ought to be averred. *Co. Litt. ibid.* Estates general and particular.

See after in *Averment.*

20. When a Count, Declaration, Bar, Replication, &c. are defective in respect of Omission of some Circumstance of Time or Place, there it may be helped and made good by the Pleading of the adverse Party; but if it be insufficient in Matter, it cannot be helped. So in certain Words in the Count or Insufficient Plea helped by the adverse Party.

* 2 *Vent. Rep.*
222. Double-
ness in Narr-
cured by
Def answer-
ing, *Vide*
postea,

Dilatory
Plea.

Declaration may be made good and certain by a Plea in Bar, by the Defendant's taking Notice of the Meaning of them. *—And altho' Words were not actionable in themselves at the Time of the Speaking of them; yet if an Action be brought for the Speaking of them, they may be made actionable by the Defendant's Pleading and Explaining the Words.

21. Where the Defendant pleads a dilatory and frivolous Plea, to the Intent to delay the Plaintiff, and to hinder him from going to Trial, the Court will, upon the Plaintiff's Motion, order the Defendant to plead such a Plea as he will stand to, or else to accept of a Demurrer unto his dilatory and frivolous Plea, and upon hearing of Arguments thereupon, the Court is to judge whether the Plea be good or bad: And if such Plea be not good, the Court will not after permit him to amend it.

And when a dilatory Plea (as in Abatement) is over-ruled, there shall be a *Respondens Ouster*, except an Issue be join'd upon it, for then it is otherwise. Also upon Over-ruling of a Plea which is pleaded in Bar of the Action, Judgment shall be given against the Defendant, for such a Plea is peremptory.

Conclusion
of the Plea.

Next we will consider the Conclusion of the Plea, which is the latter Part thereof, and is usually after this Manner: *Et hoc paratus est verificare, unde pet Judicium, &c.* as you may observe throughout these Pleadings.

Proper Con-
clusion.

Yet each Plea ought to have its proper Conclusion; as, a Plea to the Writ, to conclude ro
the

the Writ; Plea in Bar, to conclude to the Action; and an Estopple, to rely upon the Estopple, &c. *Lit.* 303. b.

Regularly all affirmative Pleas ought to conclude, *Et hoc paratus est verificare*: But Pleas meerely in the Negative ought not to be averred, because Negatives cannot be proved. Pleas Affirmative.
Negative.

And where the Defendant pleads to the Issue, the Conclusion shall be, *Et de hoc poñ se super Patriam*. And where the Plaintiff pleads to the Issue, *Et hoc pct' qđ inquiratur per priam*. Issue by Defendant.
By the Plaintiff.

If a Man pleads to the Action, he ought to demand Judgment *si Accoñ*. 8 H. 6. 28. To the Action.

If a Man pleads in Abatement of the Writ, and conclude Judgment *si Accoñ*, it is not good, because by such Conclusion he affirms the Writ, and so the Plea is repugnant in it self.—But if one pleads to the Action, and conclude Judgment *del Brief*, it is good, because he cannot have a good Writ, if he be barred of his Action. 36 H. 6. 17. Conclusion repugnant.

If one pleads sufficient Matter in Bar, and demand Judgment of the Writ, the Matter shall be taken to be to the Action, and not to the Writ according to his Conclusion. 37 H. 6. 24. Plea in Bar, Conclusion al Brief.

If another Court ought to hold Plea, the Party ought not to conclude to the Writ. but to the Jurisdiction. 38 H. 6. 18. To the Jurisdiction.

A Plea that a Plaintiff is an Alien, is a Plea to the Action; yet where the Defendant concludes to the Person as he may, he may afterwards demand the View. 3 H. 6. 55. & vide To the Person, or to the Action.
32 H. 6.

32 H. 6, 23. where he may conclude to the Person, or to the Action at his Pleasure
Lit. fo. 39. says, That there are Six Manner of Men, against whom the Defendant ought to conclude his Plea, with Judgment if they ought to be answered, *viz.*

Conclusion,
 if the Defendant
 ought
 to be answered.

1. If he plead, That the Plaintiff is a Villain.
2. That he is outlawed.
3. That he is a Stranger born.
4. That he is attainted in a Premunire.
5. That he is professed in Religion.
6. That he is excommunicated.

In Abatement.

If a Tenant pleads Jointenancy, or other Plea in Abatement, he ought to conclude Judgment of the Writ, and where he pleads in Bar, he ought to conclude Judgment if Action.

If one pleads an Estoppel and concludes to the Writ, it is not good; so he that pleads Estoppel, and relies upon it, ought not to say Judgment *si Actio*. 11 Co. 52. a.

Conclusion
 by *Assint & sic*.

Sometimes a Man must conclude *Assint & sic*, as in Debt upon an Obligation. Defendant pleads, he is a Man unlearn'd, and this was read to him to be with Condition; he must conclude, and so this Obligation being single, is not his Deed, or Judgment *si fact*. But when to a Debt, or Obligation, he doth plead Payment and Delivery of the Obligation, he must conclude Judgment *si Actio*. *Plowd.* 343.

Special Matter,
 where waived,
 where not.

When the Conclusion of a Plea *Et assint & sic*, is in the Affirmative, it shall not waive the Special Matter; but where the Conclusion is

is in the Negative, there regularly the Special Matter is generally waived *Co. Lit.* 303. 133.

Where Special Matter is pleaded, and the Conclusion *Et sic* is to the Point of the Writ or Action, the Special Matter is waived, and 'tis a Tender of the General Issue. *Plow.* 66. a.

But where one has Special Matter and pleads it, and concludes with the General Issue, it waives not the Matter precedent, as in Debt to plead unlettered, *Et sic non est factum* or a Special Payment, *Et sic nil debet*; or for one to plead that he was Jointenant with his Feoffee at the Time of the Feoffment, *Et inquit Aliens passe per le fait*, 10 *Ed.* 4. 3. 9 *Ed.* 4. *Plow.* 15. & *fo.* 19. b.

Defendant pleads *Nil detinet* (to an Executor upon Debt for Arrearages of Rent), but concludes not to the Country, but with *hoc paratus est verificare*. Plaintiff demurs, and Judgment against the Defendant for the ill Conclusion of his Plea. 1 *Saund. Rep.* pag. 283.

Other special Rules and Authorities will follow in their proper Places.

Next as to the Replication

IT is to be observed, That the Plaintiff ought not to depart from his Count or Declaration. *Co. Lit.* 303. Not to depart from the Count.

When it appears by the Replication, That the Plaintiff hath no Cause, of Action, there the Plaintiff shall not have Judgment, tho' the Bar be insufficient in Matter. 8 *Co.* 120. When it shews the Plaintiff had no Action.

When the Replication doth neither confess and avoid, nor traverse the Matter of the Bar, Doth neither confess and avoid, or traverse.

it is naught, and the Defendant may demur to it, and assign this for Cause.

Bar made good by Repl.

Where a Bar is ill in Substance, it may not be made good, by a Replication; but where the Bar is ill in Circumstance, it may be made good by Replication. 8 Co. 120. 6 H. 7. 10.

Advantage of Demurrer lost.

If the Plaintiff do reply to a Plea in Bar which is not good, by his Replication he hath confessed it to be good, and hath lost his Advantage of demurring to it.

Plaintiff replies to inforce his Case.

When the Bar is insufficient in Matter, and amounts to the Confession of the Point of the Action: And the Plaintiff replies, and shews the Truth of the Matter to inforce his Case, and in Judgment of Law it is not material; yet the Plaintiff shall have Judgment 1 Co. 120.

Repl. Must shew how the Condition is broken.

When the Defendant pleads generally, that he hath performed the Condition of an Obligation; the Plaintiff must shew in his Replication, in what the Defendant hath broken the Condition, otherwise it is but idle.

Difference of Condition, Affirmative and Negative.

And note, That there is a Difference when the Condition is in the Negative, not to do a Thing, and when in the Affirmative to do it, as to perform his Office, and to enfeof him of all his Land, &c. there he must shew in his Replication what the Office was, and what Land he had, &c. and that he did not perform it, &c. But to the Negative Condition, the Plaintiff need only say, that the Defendant did do it. 1 Leon. 136. Latch. 16. Mic. 2 R. 3. fo. 17. Plow. 44.

New Assignment.

When the Plaintiff in Trespass *quare Clm* *frē* does not well assign the Place, and the De-

Defendant plead his Freehold, the Replication must make a new Assignment.

The Conclusion of the Replication, if it be in the Affirmative, must be *Et hoc paratus est verificare*, otherwise if it be merely Negative. *Co. Lit.* 303. Conclusion.

The Defendant pleaded, That no Goods came to his Hands. The Plaintiff replied, That a Silver Bowl came to his Hands. *Quere* if the Plaintiff ought to conclude to the Country, or with a *Hoc paratus est verificare*. *Vide* 2 Saund. Rep. 102, 103. *Quere*, How to conclude.

In Debt upon Bond to perform an Award, *Et nul* Award pleaded; the Plaintiff ought to shew the Award, and also the Breach of it in his Replication. *Idem.* 102, 103, 117. Plaintiff ought to shew the Award in his Replication.

And as well in other Cases as in an Award, when a special Point is pleaded by the Defendant, the Plaintiff ought to shew more in his Replication. *Idem.* 103. how such Defect is aided after Verdict. *Idem.* So when a special Point is pleaded by the Defendant.

If the Defendant plead an Award made of Three Things, the Defendant may not reply, That it was made of the said Three Things and of one other; but he ought to reply, That it was made of Four Things, and traverse the Award made of Three Things only. *Idem* 207. Bar of Three Things. Replication of Four, and Traverse.

The Plaintiff replies, and shews three distinct Things, to two of which (one being Matter of Fact, and the other of Record) he adds two several Averments, *Et hoc paratus est verificare*, and concludes the Third and last, (being Matter of Fact) *Et hoc peto quod inquiret per patriam*. *Quere*, If it be one Replication, or three several Replications, *Quere*, if One Repl. or Three.

tions, and if the Conclusion to the Country shall not extend to the Matter of Record *Idem* 337, 338.

If one good; if three. Q if not a Discontinuance.

In this Case if the Defendant demur, *Quod plitum pced'*, &c. and the Plaintiff joins in Demurrer, *Quod plitum pced'*, &c. in the singular Number; if it be one Replication it is well enough, but if it be three Replications, *Quare* if it be not a Discontinuance. *Idem*.

Three Repl. and one superfluous.

If there be three Replications, and one of them superfluous, and the other two sufficient, and the Defendant demurs generally, the Plaintiff may have Judgment upon them that are sufficient. *Idem* 338.

Liberty upon a Replication to traverse or rely.

Where an Administrator pleads several Judgments recovered against him, and that they were for just and true Debts: And the Plaintiff replies, that they were obtained by Fraud, he has Liberty to traverse the Special Matter, or to rely on the Fraud generally at his Election. 2 *Saund.* 50.

Entire Replication bad in Part.

A Replication being entire, and bad in part, is bad in all. *Idem* 127.

Repl. reacheth not one Point in the Narr'.

If the Defendant plead an entire Plea to an *Indebitatus assumpsit* and an *Insolui computasset*, and the Plaintiff makes an entire Replication to the Plea, and the Replication reaches not the *Indebitatus assumpsit*, tho' it does the *Insolui computasset*, it ought to be wholly adjudged against the Plaintiff, altho' 'tis sufficient as to the other. 2 *Saund.* 127.

'Tis against the Plaintiff.

De injur' sua propr'.

Where in Trespass the Defendant by his Plea claims Interest in the Place where, &c. The Plaintiff cannot reply, *De injur' sua propr' abloq tali Causa* generally. *Idem* 295.

Quare

Quære, If he may not with a Special Traverse. 8 Co. 67. because it referreth to all the Plea in Bar. See more of this in Trespass.

Sometimes a faulty Bar is made good by a Replication, as if I plead in Bar, Grant of a Reversion, and omit Attornment; if the Plaintiff reply, and confess and avoid the Grant by Special Matter, then is the Bar good. 11 H. 7. 24.

Faulty Bar made good by the Replication.

In Trespass a Man pleads Arbitrament, and doth not shew the Place where Submission was, which is not good; but if the Plaintiff reply and saith, that he discharged the Arbitrators before the Award, now it is good, for that which was ill is now confessed. 10 H. 7. 24. & 20 H. 7. 12.

That which was ill confessed.

In Debt, if the Defendant plead a Release of the Plaintiff, and doth not shew where it was made, and the Plaintiff replies and pleads not his Deed, the Plea of the Defendant is made good by this Replication. *Br. Tit. Repleader* 38.

Defect of Place made good.

Defendant says The Plaintiff made an Assault in the Court before the Steward, &c. Plaintiff saith of his own wrong without such Cause; now tho' the Defendant hath not shewed what Day the Court was, yet by the Replication 'tis made good, for now the Day is not material. 21 H. 2. 30.

Day made good.

If a Double Plea be pleaded, and the Plaintiff replies, and takes Issue of one Matter, and that is found, he cannot after plead in Arrest of Judgment, for by the Replication it is made good. 18 Ed. 4. 17.

See more of Departure in Pleading. *Mod. Reg. pag. 43. 44. 227. 289.*

Next.

Next as to the Rejoinder.

Not to depart from the Plea.

IT is to be observed, That if the Defendant do therein depart from his Plea pleaded in Bar, the Rejoinder is not good. The Defendant is not to rejoin in such Words as are not contained in the Replication or Plea, for that is to begin a new Discourse of his own, and not to answer the Plaintiff.

When the Defendant in Rejoinder pleads new Matter, he may conclude, *Et hoc paratus est verificare*, for he ought to give the Plaintiff Liberty to come in with a Surrejoinder and answer to it. 1 *Ent.* 122.

Judgment for Departure.

In *Saund.* 2. *Rep.* pag. 84. The Defendant pleaded *Non Damnificatus* generally; to which the Plaintiff replied and shewed how he was damnified. The Defendant rejoin'd, That the *Damnification fuit de son tort Demesne*. Plaintiff demurs, and the Rejoinder was adjudged to be a Departure from the Plea in Bar. And altho' the Counsel for the Defendant urged, that what the Plaintiff shewed for Damage was no Damnification, because, &c. yet the Court gave Judgment upon the Departure.

So *Idem* 189, 190. In *Debt* upon Bond to perform an Award, The Defendant pleaded *Nul Arbitrament*, and upon the Plaintiff's shewing it, the Plaintiff rejoin'd, that the *Arbitrament* was not tendred according to the Condition of the Bond; and it was adjudged a Departure from the Plea in Bar.

Matter goes before the Bar.

And it is said, That where the Defendant in *Trespas*s, &c. fortifies his Bar, and there is

no

no other but pursuant to the Bar, and goes before the Bar in Conveyance of his Title, *Et è converso*, this is no Departure: But where the Bar is before the Matter shewn in his Rejoinder, this is a Departure. See 21 *Edw. 4. 12. Vide Plow. Com. 105. b. Co. Lit. 304. a.*

Lease pleaded at Common Law, in Bar, and upon the Statute in the Rejoinder is a Departure. *Dyer 10. And Dyer 102, 103.* the Rejoinder is said to be a Departure, because it did not go with the Bar, nor inforce it.

Yet it is said, that in many Cases, if new Matter be awarded in the Replication, if the Defendant alledges a new Answer in the Rejoinder, it is no Departure. *Vide ut supra.*

The Condition of an Obligation was, That the Defendant should stand to the Award of *J. S.* between the Defendant and *J. D's* Tenants. The Defendant pleads *Null' per Arbitrium*. The Plaintiff replies, That the Award was made between the Defendant and Tenants of *J. S.* and names them. Defendant rejoins, that they were not Tenants; this was said to be no Departure, but good, and the Reason seems to be, for that the Plaintiff alledged Matter which gave Occasion for such Plea. 39 *H. 6. 16. 21 H. 6. 57. & 5 H. 7. 19.*

The Rules are the same *è converso* as to the Surrejoinder Surrejoinder.

Bars.

THese Things being premised in general, (tho' there are many more Things in particular, which shall be spoke to afterwards)

S

we

we will next proceed to the several Pleadings, which I said before should be reduced to the most usual Head, as *Case, Covenant, Debt, Detinue, Quare Impedit, Trespass, Trover, Waste.*

Pleas to Action on the Case.

And as to the Actions of the Case, they are generally either concerning

{ Words,
or
{ Deeds.

Plea to Actions of Slanders.

To an Action of Slander brought upon Words, the Defendant may plead the General Issue, Not Guilty : Or if the Plaintiff sue only upon some of the Words, when all together are not actionable ; the Defendant may set them forth at large as he spake them, and traverse or justify, or plead Not guilty to the rest of the Words, as the Case requires.

Justification of Slander.

Or else the Defendant, if he have good Cause, may justify the Words.

Of all which, you have several Pleadings and Justifications (as follow) in this Treatise.

Case.

Bar al Slander.

The Defendant pleads the Statute of Limitations at large, *viz.*

II. **A** Croon non, Quia dic qd per quen-
dam Actum, (Ec.) [reciting the
Act over unto] Ne deo Acciones sup Ca-
sum pro verbis infra unum ann' pr post
finem pred' tunc present' Semon Parlia-
menti' vel infra duos annos prox' post
ver-

Case.

verba locuta & non postea prout p eun-
dem Nam inter al plenius liquet &
apparet Et idem A. ulterius dic quod
pred' ac'co vers' pred' A. in forma predia'
prolat' est Actio super Casum pro verbis
scandalosis Quodq; causa Actionis ill'
accrebit ante decimum diem Maii An-
no regni dicti Domini Regis nunc &
Domine Marie nuper Regine Anglie,
&c. quinto & non postea Qd; non solum
unus annus & amplius pror' post finem
pred' Sessioni Parliamenti predia' verum
etiam duo anni & amplius pror' post
pred' causam actionis predia' fuer' & exi-
stunt excursi & expirat' antequam Actio p'd
primo incepta fuit (Anglice was commen-
ced) versus prefat' A. Et hoc, (&c.) An-
de, (&c.)

Precludi non Quia dic quod bene & ve-
rum est qd ac'co pred' per ipsum D. ver-
sus pfat' A. in forma pred' plat' est Actio
super Casum pro verbis Scandalosis Sed
idem D. ulterius dic qd ac'co p'dia' per
ipsum D. vers' prefat' A. in forma pred' p-
lat' primo incepta fuit 29 die Aprilis
Anno Regni Dni Regis nunc septimo
Qd; causa acc'on ill' accrebit post pred'
decimum diem Maii Anno regni dicti
Dni Regis nunc & Dni Marie nuper
R'ni Angl', &c. quinto ac infra duos
annos pror' ante pred' acc'on per ipsum
D. in forma predia' prolat' Et hoc, (&c.)
Ande, (&c.)

Repl.

Et pred' A. dic qd causa acc'on ill' non
accrebit post pred' decimum diem Maii
Anno Regni dicti Domini Regis nunc

Rejoinder
and Issue

Et Domine Marie nuper Regine Angl.
 Ec. quinto ac infra duos annos prior'
 ante pred' acced' per ipm D. in forma p'
 p'olat' modo Et forma p'out pred' D. su-
 perius p'litando allegavit Et de hoc pon-
 se super p'iam Et pred' D. s'it', (Ec.)
 Ideo, Ec.)

Vide ante General Bar.

Defendant excuses himself of other Words, and
 traverseth the Words in the Declaration.

ET modo ad hunc diem scit diem Ve-
 neris prior' post C'm Sed Trinitat'
 isto eod' Termino usq' quem diem pred'
 J. R. fuit licenciam ad villam predia'
 interloquend' Et tunc ad respondend', Ec.
 coram D'no Rege apud Westm' ven' tam
 pred' C. B. per Attorn' suum pred' qm
 pred' J. R. p S. D. Attorn' suum Et
 idem J. defend' vim Et injur' quando, Ec.
 Et dicit qd predia' C. ac'conem predia' in-
 de versus eum here seu manutenere non
 debet quia dicit qd pred' J. p' decima
 die Martii Anno sexto supradicto apud R.
 predia' dixit de p'fat' C. hec Anglicana
 verba sequen' videt', That T. B. was
 thought by some that he burned a Barn, Absq'
 hoc qd predia' J. dixit de p'fat' C. p'
 Anglicana verba in Parr' pred' specifi-
 cat videt', That T. B. (pred' C. B. modo
 quer' innuendo) did burn my Barn (hoze-
 um pred' J. R. modo Def. frumenta im-
 pletum tunc existen' innuendo) with his
 own Hands) manus p'p' predia' C. B. in-
 nuendo) and no Man but he (ipsum
 C. B.

Case.

T. B. modo quer' iterum innuendo) modo & forma put idem **T.** superius & cum queritur Et hoc parat' est verificare Unde petit iudicium si p'dia' **T.** actionem suam p'edia' inde versus eum here seu manutenere debeat, &c.

Et p'dia' **T. B.** dicit quod ipse p aliqua p p'ed' **J. H.** superius p'titendo allegat' ab actione sua p'edia' versus ipsum **J.** Heno p'cludi non debet quia ut prius dicit qd idem **J.** dixit de p'fat' **T.** p'edia' Anglicana verba in Parr' p'edia' superius spec' videt', That **T. B.** (dictum

Repl.

T. B. modo Quer' innuendo) did burn my Barn (horeum dicit **J. H.** modo Def. frumento impletum existen' innuendo) with his own Hands (manus p'p' p'edia' **T. B.** innuendo) and no Man but he (ipsum **T. B.** modo Quer' iterum innuendo) modo & forma put idem **T.** superius versus eum queritur Et hoc per' qd inquireatur p priam Et p'ed' **J.** alit' (&c.) Ho ven' inde Jur' coram Dno Rege apud Westm die Lune p'or' post tres Septimanas Sec' Trinitat' Et qui nec, (&c.) Ad Accogm, (&c.) Quia tam, (&c.) Idem dies dat' est partibus p'ed' itm, (&c.)

Innuendo.

Issue.

Et p'edia' **T.** p **J. G.** Attorn' suum ven' & defend' vim & injur' quando, &c. Et dic' qd p'dia' **A.** accord suam p'di inde vers' eum here non debet quia dic' qd ipse p'di tempore quo supponitur dictionem relationem publicac'on & propac'ac'on p'edia' Anglicanor' verborum in

Case.

Aliter in com
muni Banco.

Case.

Narr' p̄d superius specificat' fieri dixit retulit publicabit & p̄p̄alabit de eodem M. hec Anglicana verba sequen' videlt, [Thou art like a Thief in Newgate] Absque hoc qđ idem C. dixit retulit publicabit & p̄p̄alabit de p̄d M. p̄d Anglicana verba in Narr' ipsius M. superius specificat' videlt, [Thou art a Thief, and I will prove thee one] p̄out p̄d M. per breve & Narr' sua p̄d superius suppon' Et hoc parat' est verificare unde pet' judic' si p̄edia' M. accōd' suam p̄d vers' eum here debeat &c.

Repl.

Et p̄d M. p̄cludi non, &c. quia dic' qđ p̄d C. die & anno sup̄radia' in Narr' sua p̄ed' superius spec' dixit retulit publicabit & p̄p̄alabit de eodem M. p̄edia' verba Angl' in Narr' p̄ed' sup̄ius spec' videlt, Thou (M. eund' M. innuen') art a Thief, and I (seipm' C. innuendo) will prove thee (eundem M. iterum innuendo) one, p̄out idem M. superius vers' cum queritur Et hoc pet' qđ inquiratur per p̄iam Et p̄ed C. s̄it' Ideo p̄cept' est Dic', (&c.)

Issue.

Vide Pl. Gen. 31, 36. Read's Dec. 114, &c. Cl. Aff. 114, 115. 1 Bro 21, 46. 2 Bro. 27. Rob. 94. 1 Mod. Intr. 45. Clift. 118.

Note, The Office of an Innuendo is to mark out the Person that was named before; but it cannot make a Person certain, who was not certain before: It cannot alter the Matter in the Sense of the Words. 4 Co. 17. b.

De.

Defendant excuses himself of other Words,
and traverses the Words in the Declara-
tion.

Et pꝛeð T. B. dic qđ pꝛeð Vicecomes
ac'conem suam pꝛeð' vsus eum ma-
nutenere non debet quia pꝛotestando qđ
hꝛe & Narratio minus sufficient' in lege
existunt pꝛotestando etiam quod consue-
tum est qđ quilibet Mercator indigena
qui transportat vinum haleces seu ali-
qua alia victualia de villa Caleis usque
Regnum Anglie ac etiam de Regno
Anglie usq; Villam C. pꝛo talibus mer-
chandizis sic transport' non solber' ali-
quam custumam Dño Regi pꝛo plito die
qđ diu ante pꝛeð' viceſimum prim' diem
Jan' Ann' viceſim' sexto supꝛadict' idem
T. B. extitit & adhuc existit scrutator
Dñi Regis portus Ville Gippewici in
Comd S. & oñum cartallorum & poꝛ-
tuum (voc' Creeks and Havens) eidem poꝛ-
tui pertin' Et ulterius idem T. dicit qđ
quidam W. S. & P. C. mercatores in-
digene die, (Ec.) Anno, (Ec.) in quadam
Nave transportaverunt a villa Caleis
usque in Regnum Anglie unum dolium
vini (voc' a Hogshead) & quatuor barrellas
alboꝝum halecium & pꝛedia' W. jacuit
super terram pꝛedia' dolium vini
apud S. in Comd C. & pꝛedia' P. jacuit
super terram pꝛeð' quatuor barrellas al-
boꝝum halecium apud C. in eod' Com'
C. que quidm' duo loca sunt duo Cartall'
(voc' Creeks) spectan' & pertin' poꝛtui pꝛi
ville

Aliter,
To an Ac-
tion De Scan-
dalo Magnat.

Protestando.

Case.

ville Gippewici Et p̄dicta' C. B. veniens
ad p̄dicta' portum C. sciscitabatur de p̄-
fat' R. quare jacuit super terram p̄dicta'
quatuor barellas alborū hallecium cūstuma
Dñi Regis inde non saluta & quidam
J. H. tunc serviens p̄dicta' C. B. veniens
ad S. p̄dicta' sciscitabatur de p̄fat' W.
quare jacuit super terram p̄dicta' dolium
vini cūstuma Dñi Regis inde non soluta
Et p̄dicta' R. & W. responderunt & dire-
runt qđ p̄dicta' Vicecomes Deputatus
p̄dicta' ville Caleis eis p̄cepit ita facere
& qđ nullus cūstumarius contrarotulatoz
nec scrutatoz Dñi Regis cum eis intro-
mitteret super quozum quidm R. & W.
verbis idem C. B. dixit qđ ipse p̄bāre
vellet eadem verba ut per dictiones co-
rundem R. & W. Absq̄ hoc qđ p̄dicta'
C. B. dixit retulit vel publice p̄pala-
bit (I will prove that, &c.) p̄out p̄dicta'
Vicecomes p̄ bre & Rarr' sua p̄ed' supe-
rius suppon Et hoc paratus est verifi-
care Unde petit iudicium si p̄dicta' Vic-
actōnem suam p̄dicta' versus eum here-
scu manutenere debeat, &c.

Traverse.

Et p̄dicta' Dic die qđ ipse, (&c.) pludi
non, (&c.) quia die qđ p̄ed' C. B. dixit
retulit publicabit & p̄palandit (I will
prove that my Lord, &c.) p̄out idem Dic
p̄ b̄d & Rarr' superius suppon Et hoc
petit qđ inquiratur p̄ p̄iam Et p̄dicta'
C. B. sicut J. H., (&c.)

Repl.

Issue sur Tra-
verse

A. B.

A. B. versus C. D.

Justification
of Words
spoken of a
Sheriff.

Action non quia protestando quod
idem A. non fuit tal' bonorum
nōis fame & gestur' ac honest' conberla-
con' qual' p'dia' A. p b're & Parr' sua p'i
superius suppon' pro p'ito idem C. dic
q'd bene & verum est quod p'ed' Dñus
Rex nunc p Literas suas paten' sub mag-
no sigillo suo Angl' p'ed' A. in Offic' un'
Justic' ip'ius Dñi Regis ad Pacem in
Com' E. p'ed' conserband' necnon ad di-
vers' felon' transgr' & al' malefacta in
eodem Com' audiend' & terminand' con-
stituit & assignabit Ac ulterius idem
Dñus Rex p caniles Literas suas paten'
Com' E. p'ed' eidem A. salvo custodiend'
nup commisisset eundemq; A. nup Dic
Com' p'd ordinasset Ac p'd A. tam in Offic'
suo Dic' Com' p'd qm in Offic' suo Ju-
stic' pacis p'd quecumque de jure & secundu
debit' Offic' p'dia' respective eidem A. per-
tinuissent & fuissent fiend' & exequend'
eadem super Sacrosancta Dei Evangel'
facere & performare Sacrum suum presti-
tisset prout idem A. p b're & Parr' sua
p'dia' superius allegabit Sed idem C.
ulterius dic q'd postq'm p'dia' A. tam in
Offic' suo Dic' Com' p'dia' qm in Offic'
suo Justic' pacis p'dia' quecumque de jure
& secundum debit' Officioz' suorum p'dia'
relative eidem A. ptinuisset & fuisset
fiend' & exequend' eadem super Sacro-
sana' Dei Evangel' facere & performare
sacrum suum sic ut prefertur p'scripisset scil
quarto die Novemb' Anno regni Dñi
Regis

Case.

Regis nunc septimo idem A. Die Com⁹
 pdia' tunc existen' dimisit officium Sub-
 vic' ejusdem Com' cuidam F. G. gen⁹
 pro 100 l. legis monet' Angl' contra for-
 mam & effectum Sacri sui pd in ea parte
 pstit' Et idem C. ulterius alit' die quā
 postquam pdia' A. em in Offic' suo Die
 Com' pzed' quā in Offic' suo Justic' pacis
 pzed' quecumq; de jure & scdm debet' Ol-
 ac' suorum pzed' respective eidem A. per-
 tinuisset & fuisset fiend' & erequend' super
 Sacrosana' Dei Evangel' facere & per-
 formare sacrm' suum pzed' sic ut pferete
 pstitisset scilt' Termino sed Villarii An-
 no regni dicti Dñi Regis nunc sept' su-
 p'radicto ad psecuton' ip'ius C. quoddam
 h'z emanabit e Cur' Dñi Regis coram
 ipō Dño Rege (eadem Cur' apud Westm'
 in Com' Widdar tunc existen') vers' terras
 cuiusdam J. R. Armig tunc Die Com'
 F. pzed' direct' retornabil' coram dño Dño
 Rege apud Westm' die Mercurii prox'
 post Quinden' Pasche tunc pr' sequend'
 Quod quidam h'z postea & ante retorn'
 ejusdem scilt' primo die Martii Anno
 septimo sup'radicto apud H. in Com' C.
 pzed' p'fat' A. tunc Die ejusdem Com' C.
 sic ut pferetur existen' ad erequend' delibat'
 fuit Super quo postea scilt' 13 die Martii
 Anno septimo sup'radicta idem A. tunc
 Die Com' C. p'edic' pferetur existen' a-
 pud H. pd in luctum & p'ficiend' de p'fat'
 J. R. 5 l. p' differendo execucon' h'ebis
 pd. (versus terras & ten'ta pzed' J. R.)
 e Cur' dicti Dñi Regis coram ipō Rege
 apud Westm' in forma pzed' emanat' &
 p'fat'

pfat' A. deliberat' recepit quas quidem
 s l. de pfat' A. H. in forma pzed' & ex
 causa pzed' A. hic & recept' idem A. ad
 tunc & ibm in manibus suis detinuit &
 adhuc detinet contra formam & effectum
 Sacrd sui pzed' in ea parte pstit p quod
 idem C. die & anno supradictis in Parr'
 pzed' superius spec' apud H. pzed' dixit
 de pfat' A. pzed' Anglicana verba in
 Parr' pzed' mencionat' videst A. B. eun-
 dem A. B. modo quer' innuendo) is a
 perjured Man, and a Corrupter of Justice,
 and I (eundem C. D. modo induendo)
 will prove him (pzed' A. modo quer' innu-
 endo) to be such, put ei bene licuit Et
 hoc, (Ec.) Unde, (Ec.)

Repl' de injur' sua ppz', (Ec.) See after
 for such a Replication. *Vide Bro. Red. 97.*

B. versus A.

ff. **A**ction' non) Quia dic qd N. super
 Trent est & pdiao tempore quo
 (Ec.) ne non a tempore cujus contrar'
 memoria hominu non existit fuit & ad-
 huc est antiquus Burgus incorporat' p
 nben Majoris Alderman' & Burgens'
 Burgi de N. super Trent in Com' Not'
 qd pzed' B. tempore exhibitio pedia'
 Bille & diu ante apud N. pdia' hitavit
 & ibm continue continuabit de mala &
 scelerata gestur' coit frequentans taber-
 nas & domos cervisie bibens otiose &
 tunc fuit cois ebrius ac calumpnians &
 contentiosus utens malis & sceleratis
 verbis tam erga generosos bone estima-
 tionis

Justification
 of exhibiting
 a Petition to
 the Justices
 of the Peace,

Case.

tionis & gradus qm̄ etiam Magistratus & alios inferiores Officiarios demonstrans se contemnere omnem authoritatem & verisim̄ erat probare periculofam & perniciofiam personam ad Rempublicam si animus ejus maliciosus & arrogans p̄ aliquem bonum cursum Regis non reprimereetur Rōne cujus p̄ed' Major' Alderman' & Burgens' de R. p̄dic' (quorum p̄ed' A. un' Burgens' Burgi p̄dic' tunc existerat) non hentes aliquam authoritatem ad corrigend' vel puniend' hum̄i malefactores p̄dic' A. p̄iso sexto die April' anno octava supradicto apud Will' Pott' p̄ed' exhibuit & deliberavit p̄lat' C. D. Armig' C. f. Armig' & al' Justic' dicti Dñi Regis ad pacem in Com' Pott' p̄dic' conservand' al' sgm̄ petitionem p̄dic' testificand' malegesturam p̄ed' B. quam petitionē Major' Alderman' & Burgens' de R. super Trent quorū p̄dic' A. un' Burgens' — ejusdem Burgi tunc existerat p̄dic' primo die Aprilis anno octava supradicto vere & iuste scribi fecer' & petitioni ill' manus suas propr' subscripser' necnon eod' Sigillum p̄dicorum Majoris Alderman' & Burgens' Burgi de R. super Trent p̄dic' in Com' R. p̄dic' eidem petitioni apposuer' in qua quidem petitionē p̄dic' Major' Alderman' & Burgens' de R. super Trent p̄ed' apud R. p̄ed' humillime obsecrabantur qđ bene placeret eisdem Justic' ad evocand' ipm̄ B. coram ipsis & aut compelland' ipm̄ B. ad inveniend' bonam securitatem p̄a ejus boni

bona gestur' adtunc deinceps vel aliter ad
capiend' al' bonum cursum sedm prudenc
suas p' p'bencon' ulteriroz' piclozum &
dampn' que crescerent si ipse idem B.
pmissus esset vivere sicut tunc vixit, put
eis bene licuit Et hoc, (Ec.) Unde, (Ec.)

Quer' Demurr' & Def. join in Demurrer
Et judic' versus Quer'

Vide Rob. Ent. 74.

Vide 4 Co. 140. No Action lies against Pe-
titioners, when they pursue the ordinary
Course of Justice.

E. H. versus E. L.

Action non Quia p'testando qd' p'd
E. L. non vere fideliter justie seu
incorrupte se gessit huit seu gubernabit
in Officio suo p'dia' pro plito idem E. H.
dic' qd' p'dia' E. L. per sex annos jam
ult' elaps' Et amplius fuit Et adhuc exi-
stit Legum Doctoz' ac Episc' L. p' tem-
pore existend' Vicar' in spiritualibus ge-
nalis & Officialis principat' per totam
Dioces' L. l'it'ime constitut' videl'c apud
S. in Com' L. p'ed' ac infra Dioces' L.
Odg' p'dia' J. J. p' totum idem tempus
Surrogat' fuit ipse E. L. videl'c apud
S. p'dia' Et p'edia' J. P. S. L. C. L. &
C. W. fuer' Ministri & Subofficiarii
p'edia' Official' per totum idem tempus
apud S. p'd qd' ipse idem E. H. per to-
tum idem temp' fuit & adhuc existit Con-
ciliat' ad Legem ac in Legibus huj' R'ni
Angl' eruditus Et p'd E. H. ulterio' dic' qd'
ipse

Def. justifies
exhibiting a
Petition to
the Commit-
tee for Grie-
vances.

Case.

ipse idem C. R. sic Conciliar' ad Legem ac in legibus erudit' existend' ante publicaconem scripti pzed' scil't primo die M. Anno Dñi 1663 supradicto apud S. in Com' pzed' deliberabit Opinionem suam diversis Clientibus suis adinde requisit' existend' & retent' Qu' nullus Ecclesiasticus Officiarius, (&c.) and so sets forth his Opinion with the Things alledged against him, and also his Reasons of doing them; and in what Manner the Defendant was guilty of them) p qd idem C. R. postea scil't ultimo die Nov. anno Dñi dcd Dñi Regis nunc 18 supradicto apud Westm' pzedict' scriptum pzed' in forma Peticon' pzedict' in Narr' pzed' specificat' scribi & ingrosari fecit ac eandem Petitionem sic ut pzetetur continen' materiam pzed' conventui (Anglice Committee) adtunc & ibm in Parlamento assemblat' ad audiend' & examinand' gravamina hujus Dñi Angl' exhibuit & deliberabit Qui quiddam Conventus adtunc & ibm plen' potest' & auctoritat' huit ad humod' gravamina audiend' & examinand' Per quem quiddam Conventum idem C. R. postea scil't eisdem die & anno apud W. pzed' summonit' fuit ad comparend' & ad respondend' de & super materiis pzed' in p'd Peticon' content' coram eodem Conventu ac idem C. R. ulterius die quod ipse p melioz' manifestacon' gravamin' in Petition' pzed' content' postea scil't p'd primo die Novemb' anno 18 supradicto apud W. pzed' eandem Petitionem imprimi causabit ac diversis Dñi Regis nunc

Case.

nunc Tigetis existentem membris ejusdem
 Conventus adtunc Et ibidem deliberavit secundum
 morem in hac parte per alios usitatum Et per
 membra ejusdem Conventus approbatum
 Que est eadem impressio publicatio Et
 dispersio scripti unde idem C. L. superius
 se modo queritur Cum hoc quod idem
 C. R. verificare vult quod predictum C. L. Et
 Ministri Subofficarii predicti sunt cul-
 pabiles de articulis supradictis modo Et
 forma prout in ipsis articulis affirmatur
 Et hoc, (Ec.) Unde, Ec.

Averment.

Quer' moratur in Lege Et Def. jung
 in moratur.

THIS Action was brought against the
 Defendant for Printing and Publishing
 a scandalous Libel of the Plaintiff in *hac forma*,
To the Honourable the Committee of Parlia-
ment for Grievances, the humble Petition of Ed-
ward King of Grays-Inn in the County of Mid-
dlesex, Esquire, sheweth, &c. (setting forth the
Petition ad dampnum 2000 l.) to which the
 Defendant pleaded as before, and the Plain-
 tiff demurred, &c.

*Quer' moratur
 in Lege Et Def.
 jung.*

1. It was agreed, That the Exhibiting the
 Petition to the Committee was legal, and
 that no Action lay, altho' the Matter in the
 Petition was false and scandalous, because it
 was exhibited in a Course of Justice, and be-
 fore those that had Power to examine whe-
 ther it was true or not.

2. And as to the Charge of Printing, Pub-
 lishing and Dispersing it, the Court held, that
 it was the Order and Course of Proceedings
 in Parliament, to print and deliver Copies
 of

Case.

of which the Court ought to take judicial Notice.

3. And as to an Objection of delivering the Copies to several Persons not Members of the Committee (as in Truth it was;) it was answered, That the Plaintiff might have replied and shewn that Matter, but by his demurring he had admitted the Publication was only by Delivery of them to Members of the Committee, as the Defendant had alledged in his Plea: And Judgment for the Defendant. *Vide* 1 *Saund. Rep.* pag. 124, & 130, 131, 132, 133.

Note, It is said to be a good Justification (altho' the Words were false,) that he was a Counsellor at Law, retained in an Issue between the Plaintiff and J. S. And he said the Words in Evidence for his Client, if they were directly material to the Point of the Issue. *Vide* *Mo.* 428. & *Hob.* 348. That the Justification is good, altho' they were not material to the Issue; especially by Consequent and for Mitigation of Damages.

And Mich 3 Jacobi int *Brook* and *Mountain* adjudged, That if in false Imprisonment the Defendant pleads in Bar, that he was a Mayor of *London*, and imprisoned the Plaintiff until he found Sureties for his good Behaviour, being a Man of ill Fame and Carriage; upon which the Plaintiff replies *De injur' sua prop' absq' tali Causa, &c.* And a Counsellor at Law retained for the Defendant upon the Information of his Client, says in Evidence, That the Plaintiff was of ill Behaviour, and had committed Felony. Upon an Action for these Words, he may well justify the Speaking of
of

of them for the Matter aforesaid, (altho' they be false) and altho' they tended not precisely in Proof of the Issue, for they tend to purge a Magistrate, and the Course of Justice, and are material to mitigate Damages, and were spoke without Malice. *Vide 2 Cro. 90.*

Case.

Et p̄dica' R. S. & M. (Ec.) dic' quod Action' non, (Ec.) quia dic' qđ ante p̄dica' tempus quo dic'con' & p̄palacon' dic'con' Anglicanorū verborū in Parr' p̄d specificat' fieri supponitur videt' 30 die Septembris Anno 8. supradicto p̄d J. S. p̄ed' Janam apud W. p̄ed' murtheravit & interfecit Unde p̄ed' M. postea scilicet p̄ed' prima die Augusti Anno, (Ec.) supradicto in Parr' p̄ed' scilicet specificat' apud W. p̄ed' dixit p̄palaabit affirmabit proclamabit & publicabit de p̄lat J. S. in p̄sentia & auditu p̄dicaorū subditoorū dicti Dñi Regis nunc p̄ed' anglicana verba in Narratione supius specificat' videt' Thou (p̄dica' J. S. modo quer' innuendo) art a murthering Villain, for thou (p̄dica' J. S. iterum innuendo) hast murthered thy Wife (nuper Uxorē p̄dica' J. S. tunc defunctā sic innuendo) put ei bene licuit Et hoc, (Ec.) Unde, (Ec.)

Husband and Wife justify, for that the Plaintiff murdered his Wife.

Et p̄dica' J. S. dic' quod ip̄d p̄ aliqua, (Ec.) p̄cludi non debet quia dic' qđ p̄dica' M. de injur' sua p̄p̄z' & abiq' causa per ipsos R. & M. supius allegat' dixit de eodem J. S. p̄dica' Anglicanā verba in Parr' p̄dica' supius specificat' videt' Thou (p̄dica' J. S. modo quer' innuendo) art a murthering Villain, for thou (p̄dica' J. ite-
T rum

Repl.
De injur' sua
propr'.

Case.

rum innuendo) hast murdered thy Wife
(p̄dia' Janam nup̄ Hr' p̄dia' J. S.
tunc defuncta fuit' innuendū) put p̄dia' J.
supius vers' eosdem R. & M. queritur
Et hoc per' qđ inquiratr' p̄ patriam Et
p̄dia' R. & M. fuit', (Ec.) Vide Hern 140.
Pl. Gen. 38.

Issue.

R. versus S.

Aliter.

For that the
Plaintiff kil-
led a Man by
unwholsome
Medicines.

A Cion non) quia protestando qđ p̄ed
R. non est tam bonorum' noīs fame
condicionē conversacion' vite & gestur' qm̄
idem R. p̄ Parr' p̄edia' supius suppon' p̄
plito idem S. die qđ ante diccionē & pro-
palacon' separal' verborū scandalosorum p̄
in Parr' p̄dia' supius spec' scit 2 die
Januarii Anno Regni Dñi Regis nunc
7. supradicto apud M. p̄dia' in Com p̄
quidam C. B. de quodam morbo vocat' le
Small-Pox languebat & laborabat Eodem-
que C. B. de morbo p̄ sic ut p̄ferte lan-
guenē & laboran eodem R. eisdem die
& anno apud M. p̄ed' medicamentu'
eidem C. B. administrare sup se suscepit
(eodem R. ad medicinam p̄actizandū
miē idem seu licentia' cristen) Et ad-
tunc & ibm quoddam medicament' pur-
gans eidem C. B. inartificialiter ad-
ministravit Rone' ejus idem C. B.
proinus postea scit 4 die Januarii
Anno 7. supradicto apud M. p̄dia' in
Com p̄ed' interit Per quod idem S.
postea scit p̄ed' primo die Feb' Anno
7. supradicto apud M. p̄edia' in Com p̄
dixit de eodem R. verba Anglicana in
Parr' ip̄sus R. supius primo spec' vi-
dest

Case.

dest (he killed a Man with Physick) Ne postea scit eisdem die & anno apud N. p̄ in Com̄ p̄ed' hens Colloquium de diversis subdit' Dñi Regis nunc de eodem R. & p̄edia' T. B. sic occis' existē ex causa p̄edia' scilicet dixit de eodem R. p̄edia' Anglicana verba in Parr' ipsius R. supius ult' mentionat' videt (he killed a Man) prout ei bene licuit Et hoc, (Ec.) Unde, (Ec.) Vide Thomps. fol. 69. 2 Mod. Intr. 135.

Et modo ad hunc diem, (Ec.) Et idem J. B. defend' vim & injur' quando, Ec. Et die qđ p̄dia' J. C. actionē suam p̄dia' inde vers' eum here seu manuteneze non debet quia die qđ' diu ante p̄ separat' tempora quibus verba p̄dia' in Parr' p̄dia' specificat' p̄ ipm̄ J. B. dici & p̄opari supponuntur scit prima die Junii anno Regni Dñi Regis nunc 20 supradico p̄dia' J. C. tres Uncias Argenti (Anglice Silver Plate) de bonis & catallis Guardiani Sociozum & Scholarium Collegii vocat' Wadham College in Academia & Civitate Oxon̄ in Com̄ ejusdem Civitatis apud Civit' Oxon̄ p̄dia' in Com̄ ejusdem Civit' infra Collegium p̄dia' invent' felonice & ut fela Dñi Regis furat' fuit cepit & asportavit Per quod idem J. B. postea scit eodem 20 die Octobris anno sñi Dñi Regis nunc 20 apud London̄ p̄ in Paroch' & Warda p̄dia' in p̄senc' & auditu diversozum dia' Dñi Regis nunc fidel' subdit' adtunc & ibm̄ p̄senc' existē & audic

Plea in Bar, and justification to an Action of Words, for charging a Man with Felony. *Trin. 20 C. 2 Rs' Ro. 902.*

Case.

diem dixit asseruit & alta voce publicavit & ppalavit eidem J. C. & de eodem J. C. verba anglicana in Parr' predicta spec' videt, Look, there is a young thievish Rogue (ipm J. C. innuendo) didst ever see such a thievish Rogue, he (pred' J. C. iterum innuendo) hath stolen two hundred Pounds worth of Plate out of *Wadham College* (hospitium vocat *Wadham College* in *Academia Oxoniensi* innuendo) Et postea scit 21 die Octobris anno supradicti apud L. pred' in Paroch & Warda pred' idem J. B. filii' dixit asseruit & alta voce publicavit & ppalavit eidem J. C. & de eodem J. C. pred' alia anglicana verba in Parr' predicta specificat' videt, didst ever see such a thievish Rogue, pred' J. C. innuendo) he (predicta' J. C. iterum innuendo) stole Two hundred Pounds worth of Plate out of *Wadham College* (hospit' vocat *Wadham College* in *Academia Oxoniensi* innuendo) put ei ex causa pred' bene licuit Et hoc parat' est verificare Unde per' Judicium si predicta' J. C. actionem suam pred' vers' eum here seu manutenere debeat, &c.

Repl.

De injur' sua
propr'.

Et pred' J. C. dicit qd ipse per aliqua per pred' J. B. supius plitando allegat' ab actione sua pred' inde vers' ipm J. B. hend' precludi non debet Quia dic' qd pred' J. B. de injuria sua pp' absq' tali causa p ipm J. B. superius plitando allegat' eodem 20 die Octobris anno sñi dñi Dñi Regis nunc 20 supradicta' apud L. predicta' in Paroch & Warda pred' dixit asseruit & alta voce pub-

Case.

publicabit & ppalabit de pſat' J. C. pſ
 anglicana verba in Hare pſia' ſupius
 pſimo ſpecificat videlt, Look, (Ec.) Ac
 etiam poſtea ſciit pſia' 21 die Octob An-
 no 20. ſupradia' apud L. pſia' in Paroch
 in Warda pſia' idem J. B. ſiſit dixit
 aſſeruit & alta voce publicabit & ppa-
 lauit de eodem J. C. at pſia' anglica-
 na ſba in Hare pſia' ſupius ule ſpec
 videlt, didſt ever ſee, (Ec.) modo & forma
 put idem J. C. ſupius inde verſus eum
 narrabit Et hoc per qd inquirat p pa-
 triam Et pſia' J. B. inde ſiſit, Ec.
 Ideo veni inde Jur coram Dño Rege
 apud Weſtm die Sabti xx' poſt quin-
 den Paſch Et qui nec, (Ec.) ad recogn,
 (Ec.) Quia tam, (Ec.) idem dies dat eſt
 partibus pſia' ibm, Ec.

Note, Verdict for the Plaintiff, that the
 Defendant de injur' pp? spoke both the
 firſt and ſecond Words. Upon 100 l. in
 London 50 l. Damages. And afterwards *Saunderſ*
 moved in Arreſt of Judgment for Miſ-
 trial, becauſe the Speaking of the Words at
 London was confeſſed by the Defendant in his
 Juſtification; and the Point in Iſſue is, whe-
 ther the Plaintiff committed the Felony al-
 ledged or not, which was triable, and ought
 to be tried in the County of Oxford, and cited
Cro. Eliz. 261. ſur accoſ per ſlander de
 perjurp, and *Mod. Rep.* 410. But the Que-
 ſtion was upon the New Statute 16 & 17 C. 2.
cap. 8. by which it is enacted, That no Judg-
 ment ſhall be arreſted or reverſed, for that
 there was no right Venue, ſo as the Cauſe

Case.

were tried by a Jury of a proper County, or Place where the Action is laid. And notwithstanding the Counsels Argument, and Opinion of one Judge to the contrary, Judgment was given for the Plaintiff upon the first Motion, for that the Statute was plain, that the Issue was properly tried in the County where it was laid. *Vide 1 Saund. 246, 147, &c. Vide Bro. Red. 99. 1 Mod. Intr. 44, 47. Cl. Ass. 94.*

Def. justifies
for that the,
Plaintiff
stole his
Sheep.

ff. **Q**uando, &c. Et dic qđ accōd non
Quia dic qđ ante diem impe-
trac brevis original pđia' N. Et ante
pđia' tempus quo supponitur diccōn'
verborum pđia' fieri scit (tali die & an-
no) pđia' N. vi & armis quinqz Oves
ipsius C. p̄rii 50 s. apud S. in Com p̄o
invenit felonice furat' fuit cepit & ab-
dixit contra pacem dia' Dñi Regis
nunc Coron & Dignitat suas p qđ idem
C. dicta tempore quo, &c. apud S. pđia'
dixit de p̄lat' N. pđia' verba Anglicana
in Brevi & Parr pđia' videt, N. B.
(pđia' N. modo que inuendo) hath stolen
my Sheep, (&c.) prout ei bene licuit Et
hoc, (&c.) Unde, &c.

Repl.
Non cul' de
Felon.

Et pđia' N. (peludi non, &c.) Quia
dic quod ipse in nulla est culpabilis de
felon pđia' prout p̄dict C. supius alle-
gavit Et hoc p̄t qđ inquiratur p pa-
triam Et pđia' C. sicut Ideo. Vide
Hern 220, 240. Rob. Entr. 71.

ff. Ne.

Case.

Justification,
for that the
Cup was
found upon
the Plaintiff.

¶ **A**ction non, Quia die qđ predicta quer' ante predicta vicesimum diem Maii anno 7. supradicto scit (tali die & anno) vi & armis videlicet gladiis baculis & cultellis cum & domu' ipsius def. apud R. in Com' predicta fregit & intravit & unum Poculum Argenteum (Anglice a Silver Cup) ad valenciam 40 s. de bonis & catallis ipsius def. adtunc & ibi invent' felonice furat' fuit cepit & asportavit contra pacem Domini Regis nunc quod quidam Poculum Argenteum superius spec' post feloniam predicta p' pfat' quer' in forma predicta fact' & perpetrat' apud R. predicta fuit invent' in possessione ipsius quer' quorum quidem felonie p'textu idem def. postea scit die & anno supradicta apud R. predicta predicta quer' coem latro-nem & furem esse palam & publice dixit retulit publicabit & p'palabit p'out ei bene licuit Et hoc, &c. Unde, (&c.)

Precludi non, Quia die qđ predicta def. false & malitiose machinans nomen & famam ipsius quer' ledere & denigrare ac ipsum totaliter destruere ac bona & catalla terr' & tenita sua forisfacere & perdere eundem quer' unum Argenteum Poculum (Anglice a Silver Cup) de bonis predicta def. apud R. in Com' predicta furat' fuisse predicta 20 die Maii supradicta apud R. predicta publice dixit retulit & publicabit quorum p'textu idem quer' tam nomine & fama quam in bonis & catallis suis multipliciter inquietat' verat' & deteriorat' existit p'out ipse superius vers'

Repl.
And Tra-
verse.

Case.

eum querite absq̃ hoc qđ idem quer' pđ
 Poculum Argenteum de bonis pđia'
 def. felonice furat' fuit p̃out idem def.
 sup̃ius allegabit Et hoc parat' est veri-
 ficare unde per' iudicium & dampna sua
 occon' p̃miss. sibi adjudicari, &c. Vide
 Bro. Red. 99. & vide ante.

Rejoinder.
 And Issue up-
 on Traverſe.

Et p̃red' def. ut p̃ius dic' quod p̃red'
 quer' p̃red' Poculum Argenteum de bo-
 nis ipsius def. apud H. p̃redia' bi & ar-
 mis & contra pacem Vñi Regis nunc
 felonice furat' fuit cepit & asportabit put
 ipse superius allegabit Et de hoc pon'
 super Parriam Et p̃red' quer' filit' Ideo
 p̃cept' est Dic', (Ec.)

A. verſus B.

Justification
 for that the
 Plaintiff had
 stolen a
 Horse *cujus-*
dam ignoti.

H. **A**ction non, Quia dic' qđ p̃red' A.
 ante p̃dia' tempus quo suppo-
 nitur diccon' & p̃palacon' verborum p̃đ
 in Hare' p̃dia' A. spec' scit 10 die Mar-
 cii anno, (Ec.) apud, (Ec.) unum E-
 quum cujusdam p̃son' eidem B. ignot'
 adtunc & ibm felonice cepit & asportabit
 Pro qua quidem felonica capcōne & as-
 portacōne Equi p̃dia' p̃ eund' A. idem
 B. p̃diao tempore quo, (Ec.) p̃diaa ver-
 ba anglicana in Hare' p̃dia' spec' de p̃đ
 A. palam & publice dixit retulit & p̃ro-
 palabit put ei bene licuit Et hoc, (Ec.)
 Unde, (Ec.)

Repl. De Injur' sua p̃ropz'. Br. Red. 99.

A. ver-

A. versus B. for charging him with House-breaking.

ET p̄dixit B. per J. S. Attoꝝ suum Justification, for that Bur-
 ven' & defend' vim & injur' quan- glary was
 do, &c. Et dicit qđ p̄dixit A. (accōd non) committed.
 quia dicit qđ ante p̄d' tempus dicōnis
 p̄palaconis & publicationis verborū p̄
 supius per p̄fat' B. de p̄fat' A. publicari
 supposit' scitit 18 die Feb anno Regni
 Domini Regis nunc 7. Domus Man-
 conalis ipsius B. apud E. in Com p̄d'
 p̄ diversos felōs & malefactores felonice
 & burglariter contra pacem Domini
 Regis nunc Corōn & Dignitat' suas
 frax' Et intrat' fuit qđ p̄d' A. fuit
 unus ex felon' & malefactoribus p̄d' qui
 Domum manconalem ipsius B. p̄d' fe-
 lonice & burglariter in forma p̄d' fre-
 ger' & intraver' Per quod idem B. po-
 stea scitit p̄d' p̄mo die April' Anno
 Dñi Regis nunc octavo supradia' apud
 E. p̄d' verba p̄d' supius in Parr' p̄d'
 specificat' videt', A. R. is a Felon and was
 one of them that broke open my House (Do-
 mum ipsius B. p̄d' sic ut p̄ferit' felo-
 nice & burglariter frax' & intrat' innu-
 endo) de p̄fat' A. dixit retulit & p̄pala-
 bavit & publicavit p̄out ei ex causa p̄d'
 bene licuit Et hoc parat' est verificare
 Unde pet' Judic', &c.

Note, In an Action on the Case for calling
 the Plaintiff Thief, if the Defendant justify
 them, for that the Plaintiff had stolen a certain
 Thing ;

Case.

Thing; and the Plaintiff replies, That after the Felony committed, and before the Speaking of the Words, he was pardoned by a general Pardon: It shall avoid the Justification, for by the Pardon the Felony was extinct. *Hob. 92. b. Vide Rob. Ent. 71. & vide Thomp. 72. Hansf. 66.*

Defendant
justifies the
Words be-
cause of the
common
Voice of the
Country.

R. **A**ction' non quia dic' qđ ante pđ tempus quo supponitur diccon' pđ verborum in Parr' pzed' superius spec' quidam A. B. fuit possessionat' de spadone pzed' ut de spadon' sua ppoz' Et sic inde possessionat' existed' idem spado apud E. pzed' extra possession' ipsius A. felonice capt' & furat' fuit qđq' cois' vox & fama totius populi pzie' ibm tunc fuit qđ pzed' S. feloniam pzed' fecisset per quod idem R. pđicta verba Anglicana in brevi & Parr' pzed' superius spec' de pzetat' S. pđicta tempore quo, &c. dixit retulit & ppalavit put ei bene licuit Et hoc parat' est verificare. Unde per' Judic' si action', &c.

[Repl.
De injur' sua
propr.

(pzecludi non) quia dic' qđ pzed' R. die & anno supradicta' in Parr' pđicta' superius specificat' de injur' sua ppoz' & absque causa p ipsum R. superius allegat' apud E. pzed' palam & publice dixit pze-
palavit & publicabit de pzetat' S. pzedicta' falsa ficta & scandalosa Anglicana verba in brevi & Parr' superius spec' videlicet (S. B. hath stolen A. B's Gelding, &c.) pout ipse superius vsus eum queritur Et hoc per' quod inquiratur per pziam' Et pzedicta' R. sicut' Ideo. Vide i Bro.

122. Quod Cōis vox fuit, &c. Rob. Case.
Ent. 95.

A. versus C.

A Ccoñ non, quia die pd' pzed' A. ante Justification,
pzed' tempus quo supponit' dic- for that the
conē & propalacoñ pzed' Anglicanozum Plaintiff sold
verboꝝ in Parr pzed' superius spec' fieri Wares by
fuit & adhuc est Aromatarius (Angl a false Weight.
Grocer) ac p tot' tempus in Parr' pzed'
superius spec' apud London pzed' in
Paroch' & Warda pzed' usus fuit & exers
cuit facultates suas in Misterio pzed' ac
res & Merchand' dia' facultat' sive my-
steriū pzed' concernen' p tot' tempus il-
lud ibi de tempore in tempus quibus-
cunq' dia' Dñi Regis ligeis vendidit &
utterabit Et idem C. ulterius die quod
ante pzed' tempus quo supponitur dic-
e' onē & propalacoñ pzed' Anglicanozum
verboꝝ fieri in utendo & exercend' fa-
cultat' sive mysterium pzed' apud London
pzed' in Paroch' & Warda pzed' vendi-
dit & utterabit diversas res mercimon
& Merchand' dia' facultat' sive myste-
rium concernen' cuidam C. f. & diver-
sis al' ligeis dia' Dñi Regis nunc per
fals' & illicitū pond' & p'cipue per quod-
dam pondus vocat' a Pound Weight quod
in se fuit deficiens & indigebat vi sui
ponderis sed'm Standard una Uncia &
dimid' unius Uncie per quod idem C.
postea scilicet pzedico 13 die Januarii
Anno 7. supradicto apud London pzed'
in Paroch' & Warda pzed' dixit & pro-
palabit

Case. palabit de p̄fat' A. verba Anglicana in
 Parr' p̄dia' superius spec' videt (he p̄d'
 A. inuendo hath cheated his Customers by
 false Weight, &c.) prout ei bene licuit Et
 hoc, &c. Unde, (&c.)

Repl' De injur sua prop̄.

A. versus B.

Defendant
 justifies, for
 that the
 Plaintiff
 owed him
 the Money
 demanded,
 &c.

Quando, &c. (Acc'on' non) quia die
 qd' ante p̄dia' tempus dic'ionis pro-
 palationis & publicacōnis Anglicano-
 ru' verboru' p̄dia' scilt' 10 die Junii An-
 no, (&c.) 7. apud S. in Com p̄dia' pre-
 dictus A. vere & iuste indebitat' fuit pre-
 fat' B. in quadam denar' sumā videt in
 5 l. legal' monete Angl' p' diversis merci-
 mon' & Merchandizis eidem A. p' p̄dia'
 B. ante tempus illud vendit' & delibat'
 p' qd' idem B. p̄dicto tempore quo, &c.
 scilt' p̄dicta' primo die Septemb' Anno 7.
 sup̄radicto venit ad ostium Dom' man-
 cōnal' p̄dia' A. in Parr' p̄dia' mencōnat'
 situat' in S. p̄dia' & idem B. claman-
 do debum suu' prop̄ adtunc & itm
 dixit propalabit & alta voce publicabit
 de p̄fat' A. p̄dia' Anglicana verba in
 Parr' superius spec' videt (Mr. A. owes
 me Five Pounds, and I will stay here demand-
 ing of it till I be paid) prout ei bene licuit
 Et hoc parat' est verificare unde pet' Ju-
 dicium si p̄dia' A. Acc'on' suam p̄dia' in-
 de versus eu' here seu manutenere de-
 beat, &c.

Repl'

Repl' De injur' sua propz'. Vide 1 Mod.

Case.

Intr. 43, 44.

In Banco Regis, That the Plaintiff was forsworn
as a Witness.

M. versus P.

A Ccon' non, (Ec.) quia dic' qd' bene
& verum est qd' ante dicon' &
propalacón' Anglicanozūm verbozū in
Harr' p'dia' superius spec' scit' in Cer-
mino Sed Hillarii ult' p'reit' in Harr'
ipsius M. menconat' quedam Accón in
placito transgr' dependens fuit in p'dia'
Cur' die Dñi Regis coram ipso Rege
int' p'dia' C. quer' & p'dia' B. Def. super
quam quidem Accónem talit' p'cess' esset
qd' erit' supinde junct' int' p'dia' C. & p'red'
B. ven' triand' per quandam Jur' p'dia'
13 die Junii Anno Dñi Regis nunc 7.
apud Westm' p'dia' in magna Aula pla-
citozū' ibm coram p'dia' J. H. Mil' Ca-
pital' Justic' Dñi Regis ad p'lita co-
ram ipso Rege tenend' Magn' scdm for-
mam Statut', Ec. Et idem P. ulterius
dic' qd' erit' p'dia' existen' an p'dia' C.
tempore transgr' ill' supposit' evenisset
extra Limer' ipsius C. (eodem C. tunc
jurat' existen' Constabular' de J. in Com'
Midd'x p'redia') vel non, Super quo p'red'
M. modo quer' postea scit' p'red' 13 die
Junii Anno 7. supradicto coram J. H.
Mil' Capital' Justic' p'red' apud Westm'
p'redia' in p'redia' Magna Aula p'litozū'
ibm in Com' Midd'x p'redia' tanqm te-
tis

Justification,
for that the
Plaintiff for-
swore him-
self.

Case.

His ad probandū Erat p̄dicta ex parte
 p̄dicti B. p̄ducta fuit ac adtunc & ibi
 coram p̄fat' Capital' Justic' deba juris
 forma jurat' fuit in Evidenciā dare p̄fat'
 Juratoz' veritatē tot' veritatē & nihil
 p̄ter veritatē Et superinde interrogat'
 super Sacram̄ suū p̄dict' utrum p̄dicta C.
 evenisset extra limit' p̄dicta C. vel non p̄
 M. adtunc super Sacram̄ suū p̄dict' coram
 p̄dicta Capital' Justic' apud W. p̄dict' in
 Magna Aula p̄torum ibi in Com
 Middr p̄dict' Jur' ill' tunc in evidenciā de-
 dit & affirmavit qđ p̄dicta C. evenisset
 extra limit' p̄dicta C. (innuend' limit'
 ipsius C. ut Constabular' de J. p̄dict' exis-
 sten') Nam quando p̄dicta C. flecteret (Ange
 should have turn'd) ad dextram manum
 flectebat ad sinistram manum Ubi reuera
 p̄dict' C. non evenit extra limit' p̄dict' C.
 sed infra limit' p̄dicta C. p̄dicta am-
 bulabit per quod p̄dicta P. p̄dictio 13
 die Junii Anno 7. supradicta apud W.
 p̄dict' in Com Middr p̄dict' Colloquium
 h̄us de triacone p̄dict' & de testam̄ p̄dict'
 M. p̄dict' super triacon̄ ill' & cum p̄fat'
 B. de & concernē p̄dicta M. & de & concer-
 nēd p̄dict' testam̄ qđ p̄dicta M. adtunc &
 ibi in Evidenciis dedit ad triacon̄ p̄dict'
 in Causa p̄dict' int' p̄fat' C. & D. de eo-
 dem M. dixit eadem Anglicana verba
 in Parr' ipsius M. mencōnat' vidēst, That
 Fellow (p̄dict' M. innuendo) hath forswore
 himself (p̄dict' M. iterum innuendo) in
 what he hath said, p̄out et bene licuit
 Que quidem verba que p̄dict' M. ad tria-
 con̄ p̄dict' prius mencōnat' in evidenciā Jur'
 p̄dict'

probat' dedit fuer' falsa & veritat' penitus
contrari' Et hoc, (&c.) Unde, (&c.)

Case.

Repl' De injur' sua prop?'. Vide Ast. 21.
Thomps. 65.

Note, In an Action of the Case, A. *versus* B. if the Plaintiff declare, That he took his Oath in the Court of *King's-Bench* against B. of certain Matters, (&c.) That thereupon B. falsely and maliciously intending to scandalize the Plaintiff in the Hearing of the Justices and Officers of the Court, and others being there, said, There is not a Word true in that Affidavit, and I will prove it by forty Witnesses; yet such Action is not maintainable: For the Answer which B. made to the Affidavit was a Justification in Law, and spoken only in Defence of himself, and in a legal and judicial Way, being he said, He would prove it by Forty Witnesses. *Vide 1 Roll. Abr. 87.*

And there is also a Case cited, That in *Fox* in the Book of *Martyrs*, there is a Relation of one *Greenwood* of *Suffolk*, who is there reported to have perjured himself before the Bishop of *Norwich*, in witnessing against a Martyr in the Time of Queen *Mary*; and that afterwards he came to his House, and there, by the Judgment of God, his Bowels rotted from his Belly, in exemplary Punishment of Perjury. One *Pitt* being newly made Parson of the Parish where the said *Greenwood* inhabited, and not well knowing his Parishioners, preaching against Perjury, cited this Story, and it happened that *Greenwood* was alive and in the said Church; and afterwards brought an Action
of

Case.

of the Case against the Parson, and it was adjudged not maintainable, because it was not spoke maliciously. *Vide 2 Co. 91.*

C. versus R.

Aliter.
Qd' Quer' fu-
it perjurat' ut
testis.

Et pzed' C. Accōnem non, (Ec.) Quia dicit qđ quidem C. S. diu ante pđ tempus quo supponit dicōnem & ppa- laōnem verborum pzed' in Parr' pzed' spec' implitasset quendam A. B. in Cur' die Dñi Regis de Banco hic de eo quod ipse Vi & armis Ctm ipsius C. apud D. in Com' pzed' fregit in quo quidem plito pzed' A. dixit qđ ipse in nullo fuit inde Culpabilis put pzed' C. superius versus eum querebatur Et de hoc posuit se super priam & pzed' Quer' similiter qui quidem exitus p hñ Dñi Regis de Pi- si prius coram Justic' ad Alfas in Com' pđco apud D. in Com' pzed' (tali die & Anno) p priam ibm triand' hit fuit Ad quem quidem diem apud D. pzed' coram (Ec.) Justic' ejusdem Dñi Regis ad Alfas in Com' pđict' capiend' Alfgd pđ Quer' testis ad triand' exit' pđict' tunc & ibm jurat' in evidenciis dedit super Sa- crm suū quod pzed' C. fuit scil' de pđco cto in Dñico suo ut de feodo & quod idem C. & Antecessores sui & eorū Ballivi semper ceperunt reddit' inde ad eorū pro- priū usum in quo quidem Sacramento pzed' C. commisit pjurā manifestum eo quod idem C. non fuit scil' de pđco cto in Dñico suo ut de feodo nec idem C. nec Antecessores sui neq; eorū Ballii un- quam

quam pceperunt reddit inde ad eorū
 ppriū usum p quod idem R. p̄dco tempore
 quo, &c. dixit & p̄nunciabit de p̄fat' C.
 p̄dic' verba in h̄i & Barr superius spec
 put ei bene licuit, Et hoc (&c.) Unde si
 actio, &c.

Case.

(Precludi non) debet, Quia die q̄
 p̄dic' R. de injur sua ppria absq̄ causa
 per ipsum R. superius allegat' Machi-
 nans & intendens ipsum C. minus rite
 p̄gravare ac nomen & Statū sua ledere,
 detrudere & peiorare ac ipsum C. in
 perturbacōem veracōem & infamiam in-
 ducere p̄dca verba falsa Scandalosa &
 mendacia de ipso C. apud D. p̄dic'
 dixit & p̄nunciabit put idem C. supius
 verlus eum queritur, Et hoc, (&c.) Si-
 lis Barr ut Testis ad Sessionē Pacis &
 silis Repl, Bro. Red. 60. Silis Barr
 ut Testis sup Interrogatoz' in Canc,
 Pl. Gen. 28, 29, Silis Barr ut Def' p
 Respons' in Canc, Clift. 103. Silis in
 Cur coram Reg & Concilio, Pl. Gen. 28.

Repl.

Defendant justifies the Words of Perjury;
 for that the Plaintiff being sworn at a Court-
 Leet, revealed the Secrets of the Jury. Bro.
 Vad. 118.

Silis Justification, for that the Plain-
 tiff forswore himself about Limits of a Pa-
 rish. 2 Mod. Intr. 134.

Case.

R. S. versus J. P.

Defendant
pleads, That
he was di-
strained,
sworn and
put upon the
Inquisition
by which the
Plaintiff was
Indicted, &c.

Et p̄dicit J. P. die qđ p̄dicit R. S.
Actionem suam p̄dicit versus eum
here non debet quia die qđ ipse distrin-
xit p̄ h̄c Dñi Regis ad comparendū co-
ram N. B. C. D. & locis suis Justic
Dñi Regis ad diversa felonū transgr̄ &
malefca in dño Com L. audiendū & ter-
minandū necnon ad pacem in eodem Com
conserbandū Assignū apud p̄dicit Villam
de R. p̄dicit die Martis pr̄ post festum
Sci Michis dño Anno rcio quo p̄textu
idem J. tunc ibm p̄ districtionem com-
parendū p̄ nomen, (Ec.) jurat' fuit simul-
cum aliis ad inquirendū de felonū transgr̄
& al malefactis in eodem Com L. p̄pet-
rat' p̄ quam Inquisitionem p̄dicit R. S.
indictat' fuit de felonū p̄dicit, Et hoc pa-
rat' est verificare, Unde petit judiciū si
idem R. Accōn p̄dicit in hoc casu Usus
eum here seu manutenere debeat, (Ec.)

Repl.
No such Re-
cord of his be-
ing sworn up-
on the Inqui-
sition.

Et p̄dicit R. S. die qđ ipse ab Accōne
sua p̄dicit versus p̄fat' J. P. hend' p̄ ali-
qua p̄ ipsum pallegat' p̄cludi non debet
quia dicit qđ nullū tale het' Recordū
(viz.) qđ idem J. juratus fuit coram
p̄fat' Justic pacis ad inquirendū de felonū
transgr̄ & al malefca in p̄dicit Com
L. p̄petrat' quale idem J. superius al-
legavit, Et hoc parat' est verificare put
Cur' Dñi Regis hic cons̄ unde ex quo
p̄dicit J. P. conspiracionem p̄dicit non
dedic' pet' judiciū & dampna sua ea oc-
cōne sibi adjudicari, (Ec.)

Et

Et p̄dicta' J. P. die qđ tale h̄etr' Re-
 cordū viz. qđ ipse juratus fuit coram
 p̄fatis Justic' pacis ad inquirend' de felo-
 niis t̄n̄gr' & al' malef̄cis in p̄dicta' Com'
 L. p̄petrat' quale idem J. superius alle-
 gabit, Et hoc parat' est verificare p̄p̄ri
 Cur' Dñi Regis hic Cons' Jō quoad
 hunc Exitum triand' dat' est inde dies
 tam p̄fat' R. S. qm̄ p̄dicta' J. P. hic
 ad p̄fatis terminū & dictum est eidem
 J. P. qđ tunc hic deferat Recordū sub
 piculo incumbenti, &c.

Vide 2 Bro. 14. Winch. Ent. 107. Vid. 145.

Case.

Rejoinder.
 Qd' h̄etr',
 and Defen-
 dant ordered
 to bring the
 Record Pe-
 ric'lo incumb'.

To Action for Slander of Title

THE Defendant pleads in Bar, and shews Slander of
 a Covenant for H. S. to stand seized to Title.
 the Use of his Will, and then sets forth the
 Uses limited by the Will of H. S. That after-
 wards H. S. died, and afterwards the Husband,
 one of the Legatees, died, and that his Wife
 enjoyed the Term by Survivorship. Per
 quod he spoke the Words.

ff. Ac p̄dicta' J. C. & O. fuer' de in- Bar.
 teresse p̄d termini Mille annoz' de & in
 eisdem Maner' terr' t̄ntis & heredita-
 mentis cū p̄tin' p' ult' voluntatē p̄dicta' ut
 p̄fertr' legat' possessionat' virtute legationē
 & Statut' p̄dicta' Ap̄s̄sq' J. & O. sic inde
 possess' existend' p̄dicta' J. apud L. p̄dicta'
 de interesse Termini ill' obiit possess' ac
 p̄dicta' O. ipm̄ supervixit & fuit & adhuc
 est de p̄dicta' interesse Termini ill' posses-
 sionat' p' jus accrescendi p' quod idem
 R. S.

Case.

R. S. p^{re}dicto tempore quo, &c. asseruit retu-
lit declarabit & publicavit, Qu^{od} p^{re}dict^{us}
Maneriu^m de *L.* cu^m pertin^{et} unde p^{re}dict^{us} qua-
draginta acr^{os} terre cu^m pertin^{et} in *L.* p^{re}dict^{us}
sunt & p^{re}dicto tempore quo, &c. fuer^{unt} par-
cell^{ae}, Ac p^{re}dict^{us} quadraginta acr^{os} terre in
B. p^{ro} lit^{er}ime secutat^{us} fuer^{unt} p^{er} p^{re}dict^{us} *H. S.*
p^{re}fat^{us} *J. T. & O.* in vita ipsius *J.* ad
eoz^{um} p^{ro}p^{ri}et^{atem} usus p^{er} Termin^{um} mille annoz^{um}
p^{ro} & immediate sequen^{tes} dec^{em} p^{re}dict^{us} *H. S.*
& *A.* ur^{is} ejus, Et q^{uod} p^{re}dict^{us} *J. T. & O.*
in vita ejusdem *J.* fuer^{unt} de interesse p^{re}-
dict^{us} Termini ejusdem Manerⁱⁱ de *L.* cu^m
pertin^{et} ac p^{re}dict^{us} 40 acr^{os} terre in *B.* p^{re}-
dict^{us} lit^{er}ime possessionat^{us}, Et q^{uod} p^{re}dict^{us} *O.*
post mortem p^{re}dict^{us} *J. T.* fuit sola pos-
sess^{or} de humo^{ri} interesse ejusdem Ma-
nerii & p^{re}dict^{us} 40 acr^{os} terre in *B.* p^{re}dict^{us} p^{er}
jus accrescendi, &c. prout ei bene licuit,
Et hoc, (&c.) Unde, &c.

Vide Coke's Ent. Tit. Action sur le Case,
for several Pleas to Actions for Slander del Title,
viz, fo. 34, &c.

In these last Pleadings before—as also in
many other following, there are and will be
often used *Protestando's*, *Averments*, and
Traverses, &c. And therefore it will not be
amiss to consider them severally in this Place.

Of a Protestando.

Protestando.

AND First, as to the Protestation or *Pro-*
testando: To come to the Knowledge
of this we must observe, that the Law will
hardly allow Duplicity in Pleading, as hath
been

Case.

Double Plea

Protestando,
what.

Of two Sorts.

been before observed ; for if a Man alledge several Matters, the one nothing depending on the other, the Plea is accounted double: Yet if a Plea doth contain divers Matters in it, upon which an Issue may be taken, if the Plea could not have been good without alledging all those Matters in it, in such Case the Plea is not double; for the Law doth not deny the Defendant to plead all such Matters that his Case affords for his just Defence. And if he be compelled to alledge double Matter in his Plea, yet if he do insist upon one of them, the Plea is not double.

However, to prevent this double Pleading they make use of a *Protestando*, which is a Safeguard to the Party, and maketh it from being concluded by the Plea he is about to make, that Issue cannot be joined upon it.

And it is also a Form of Pleading, where one will not directly affirm or deny any Thing which is alledged by another, or by himself, and is therefore of Two Sorts:

1. One of which is, When a Man pleadeth a Thing which he dareth not directly affirm, or that he cannot plead for fear of making his Plea double; as if in conveying to himself by his Plea a Title to Land, he ought to plead divers Descents by divers Persons, and he dare not affirm that they were all seised at the Time of their Death; or altho' he could do it, yet it will be double to plead two Descents, of both which, each by it self may be a good Bar: Then the Defendant ought to plead, and alledge the Matter, interlacing the Word [*Protestando*]; as to say, *Protestando*, that such a one died seised, &c.

Case. And this the adverse Party cannot traverse.
 Not traversable.

2. The other is, When one is to answer to two Matters, and yet by the Law he ought to plead but to one; then in the Beginning of his Plea he may say, *Protestando* that such Matter is not true, or so as the Plaintiff supposes; and then making his Plea further, he adds *Pro plito dicit, &c.* and so he may take Issue upon the other Part of the Matter, and then he is not concluded by any of the rest of the Matter he hath by Protestation so denied, but that he may afterwards take Issue upon it. *Vide Finch-Ley 359.*

Protestando non cogn', &c. Sometimes it is used in these Word, *Protestando non cognoscendo*, such and such Things, *Pro plito in hac parte idem A. dic', &c.*

Of what it ought not to be. Some Books say, That the effectual Matters of the Bar ought not to be taken by Protestation; and that Things issuable or traversable may not be taken by Protestation. 39 H. 6. 5. i Com. 277. b.

Not to be repugnant. And that the Protestation ought not to be contrary to it self; for if it be repugnant it is void. 22 H. 6. 37.

Which of the two Things. If two Matters be pleaded, *Scit seizin del Roy & Nient parcel del S.* the Seisin of the King shall be taken by Protestation 2 H. 6. 15.

There is also a *Protestando* used many Times in a Declaration, as in Covenant, the Form whereof follows.

N. E T idem Quer' Protestando qd' ipse a tempore confect'onis Indenture pdict' pfat' Def' hucusque bene & fideliter performabit perimplebit & Custodibit oia & singula in Indentur' pd' superius spec' ex parte ipsius Quer' fore performand' & Custodiend' sc'dm formam & effectum Indenture ill' Protestando etiam (that the Defendant) non performabit perimplebit seu Custodibit aliqua in Indentur' pd' superius specificat' ex parte pd' Def' fore performand' &c. In facto (the Plaintiff says, That the Defendant did suffer the House to be ruinous, &c.)

Protestando pro & con' in Covenant.

That the Tenements were divided, and not contained in the Fine.

N. E T pred' J. G. Protestando qd' Centa pred' cum pertin' superius in Parr' pred' specificat' & divis' fuer' a Manerio pred' p' pfat' G. G. ante finem pred' in forma pred' lebat' Protestandoq; etiam qd' Centa pred' cum pertin' superius in Parr' pred' specificat' non continentr' in Fine pred', Pro plito tamen idem J. G. dic' qd' pred' G. R. post confect'ion' ult' voluntat' seu pred' & ante finem pred' in forma pred' lebat' scilt' (tali die & anno) apud S. pred' obiit, Et hoc, (&c.) Unde, &c.

Protestando qd' in Bar,

Protestandoq; etiam.

Pro placito dic,

N. E T modo scilt' die Jobis pr' post Octab' Sed Hill' isto eodem Term' cor' D'no Reg' apud Westm' ven' pd' J. S.

Protestation, That the Information is insufficient,

Case.

p J. H. Attozn' suu', Et hito auditu In-
formacon' predict' dic qd' ipse non intend'
qd' dict' Dn'us Rex nunc ip'm J. S. p
Premissis in Informat'con' pred' superius
spec' ulterius impetere seu occasionare
velit aut debet, Quia Protestando dic'
qd' Informat'co pred' ac materia in ea-
dem content' minus sufficien' in lege exi-
stunt ad quas ip'e necesse non het nec p
legem terre tenetr' respondere pro plito
tamen dic' qd' Carolus p'imus nuper
Rex Angl', &c.

Proplacito dic'.

Protestando,
Qd' plene Ad-
ministravit.

ff. **E**t pred' T. quarto die plito solemp-
niter exact' per G. T. Attozn' suu'
ben' & dic' qd' pred' M. execuc'on suam
de debo & dampnis pred' de bonis & ca-
tallis pred' T. p'opz' lebat' here non de-
bet, Quia Protestando qd' ipse idem T.
plene administravit oia bona & catalla
que fuer' pred' J. tempore mortis sue
in manibus suis administrand', Et qd'
pred' T. non het nec tempore prosecuc'on'
pred' tris de Sed fac' huisset aliqua bo-
na seu catalla que fuer' pred' J. tempore
mortis sue in manibus suis admini-
strand', Pro plito pred' E. dic' qd' ipse
non vendidit seu elongabit vel in usum
suum p'opz' convertit & disposuit aliqua
bona & catalla que fuer' pred' J. tem-
pore mortis sue modo & forma p'out per
Inquisic'on' pred' superius supponitur,
Et hoc parat' est verificare unde pet'
Judicium si pred' M. execuc'on' suam
de debo & catallis pred' T. p'opz' here
debeat, (&c.)

Et quod non
habet.

Pro placito qd'
non vendidit
seu elongavit.

Breach

Breach assigned for ousting him of the
Lands.

ff. **A** Cion non quia Protestando qd' *Protestando,*
eadem P. conveni'onem suam *That he kept*
Warrant p'ed' a tempore levac'on' finis *his Warrant-*
p'ed' ex parte sua custodiend' huculq' *ty.*
bene & fideliter custodivit, Protestan- *And that H.*
doq' etiam qd' p'dict' H. S. p'dict' tem- *S. non habuit*
pore intraco'm ipsius H. in testa p'dict' *ius.*
non fuit aliquod legle jus aut titlum *Pro placito*
ad eadem testa cum prin', Pro plito *non ejecit.*
eadem P. dic' qd' p'dict' H. S. ipm' J. a
possessione & occupac'one testorum p'dict'
non ejecit expulit & amovit p'out p'dict'
J. supius inde versus eam narrabit,
Et hoc (&c.) Unde (&c.)

Des non cogn' qd', (&c.) without a Pro-
testation. 44 Aff. 35.

Protestando & non cogn' aliqua fore
vera. Rast. Ent. 617.

Separat' Protestac'ones contra materiam
in Parr' & alia Protestac'o qd' agreeat
fuit qd', &c. Rast. 4.

Protestando non cogn' 4. materias al-
legat in Parr'. Co. Ent. 28.

Diverse Protestac'ones in principio p'iti.
Rast. 519. 553.

Protestando qd' Parr' est insuficiens in
lege, &c. Co. Ent. 43. 711.

Qd' plitum est insuficiens in lege, &c.
36. 628.

Protestando non cogn' aliqua in Parr'
fore vera. Co. Ent. 43.

Qd'

Case.

*Ad' T. non fecit testund nec fecit quer'
Exec'. Plo. 275.*

*Quod bona non fuer' tanta neq; tanti va-
lozis. Rast. 636, 640, 648, 649, 667.*

Vide Townsend's Table, fol. 374. and
Cornwall's Tables, fol. 367, &c.

Of Averments.

THEY are of two Sorts, General and Particular.

General.

A General Averment is the Conclusion of every Plea, Bar, or Replication, and other Pleadings, containing Matters affirmed which ought to be averr'd. *Et hoc paratus est verificare, (&c.)*

Particular.

Particular Averments are, where the Life of the Tenant for Life, or of Tenant in Tail are averr'd.

Also of the Age of a Person; as also that Places, Sums of Money, and Persons named, are one and the same by the Words, *Cum hoc quod idem A. * B. verificare vult qd', (&c.)*

* The Person
averring.

The Use of
Averments.

The Use of an Averment is, to ascertain that to the Court, which is generally or doubtfully alledged, that so the Court may not be perplex'd of whon or of what it ought to be understood. And a Man shall never be estopped for making such Averment, to ascertain the Intent of the Parties, if it be not utterly inconsistent with the Deed.

And when.

And therefore, if there be any Uncertainty in the Consideration of a Deed, or in the Thing granted, or in the Person to whom the

Grant

Grant is made, there is allowed an Averment to make this certain.

As to the Defect in the Consideration of a Deed. *Vide* 1 Co. 176. *Leon*. 170. *Lane's Case*.

And tho' there be an exprefs and particular Consideration alledged in the Deed, as of Money; yet another Consideration may be averr'd, so it be not contrary to the Deed, as the Consideration of a Marriage and Jointure.

4 Co. 3. *Dyer* 146. 7 Co. 40.

So of the Uncertainty of the Thing *Vide* 3 Co. 55. a. *Altham's Case*.

And as to the Ambiguity or Uncertainty touching the Person, *Vide* 5 Co. 68. *Cheny's Case*, 2 *Leon*. 35. 3 *Leon* 79. 4 Co. 71. 6 Co. 20 *Hob*. 32. *Mo*. 105.

The Law does so favour the Intent of the Parties, that it will in some Cases allow a Deed to be expounded differently from the ordinary and most natural Import of the Words; as that the Money upon the Bond was not to be paid the 24th of the Month it was dated, but in the next Year following. *Rolls Tit. Pa-rols* 251. *Hob*. 269.

Counts and Avowries in Nature of Counts, need not to be averred. *Co. Lit.* 303, 362. a.

Fuit & adhuc existit seifitus, is a sufficient Averment of Life in a Count. *Dyer* 304 *Roll*. 50.

One may aver what Day the Deed was inrolled. 4 Co. 71.

But an Averment doth not lie against a Record, being a Thing of a solemn and high Nature, the other being only an Allegation of the Party.

Case.

Of the Con- sideration of a Deed.

Uncertainty of the Thing. Uncertainty of the Person

Averment different from the Im- port of the Words.

Counts and Avowries.

Fuit & adhuc existit

Inrolment of Deed.

Not against a Record, &c.

Nor

Case.

Nor may one aver a Thing directly contrary to the Condition of a Bond.

Not in Utlary, &c.

In case no Traverse can be taken, the Plaintiff ought not to aver his Plea; as in case of Utlary, and of an Excommunication certified, 36 H. 6. 17, 18.

Averment of Tenant for Life.

ff. **C**um hoc quod p[re]d[ic]t[us] W. & C. verif[ic]are volunt q[uo]d p[re]d[ic]t[us] Comes & Comitissa L. (the Tenants for Life) adhuc superstites & in plena vita existunt videlicet apud London p[re]d[ic]t[us] in Paroch[ia] & Warda p[re]d[ic]t[us].

Of Cestuy que vie.

ff. **C**um hoc q[uo]d p[re]d[ic]t[us] C. D. verif[ic]are vult q[uo]d p[re]d[ic]t[us] J. (Cestuy que vie) super p[re]d[ic]t[us] Festum diem Annunc[ie] b[ea]te Marie Virginis Anno D[omi]ni 1695. ac postea fuit sup[er]stes & in plena vita videlicet apud B. p[re]d[ic]t[us] in Com[itu] p[re]d[ic]t[us], &c.

Sur Avowry pur Arrears de Rent charge per Baron en Droit se Feme to cease, if the Executor should pay 100 l. &c.

ff. **C**um hoc q[uo]d p[re]d[ic]t[us] C. verif[ic]are vult q[uo]d p[re]d[ic]t[us] H. S. Executor Testi p[re]d[ic]t[us] J. S. non solvit eidem C. & H. seu eorum alteri p[re]d[ic]t[us] 100 l. in Testi p[re]d[ic]t[us] J. S. sic ut p[re]fertur mentionat[ur] juxta formam & effectum ejusdem Testi q[uo]d p[re]d[ic]t[us] H. tempore capto[n]is, (&c.) in sua plena vita fuit & adhuc superstes existit, scilicet apud H. p[re]d[ic]t[us], Et hoc, (&c.) Unde, &c.

That his Son was alive, and had not attained the Age of 21.

ff. **C**um hoc quod p[re]d[ic]t[us] C. S. filius maximus natu[m] ejusdem C. adhuc sup[er]stes & in plena vita existit ac infra etate

etate viginti & un' annorum videlicet apud
paroch de S. in Com D. predia'.

Case.

Pleads former Judgment.

E C pda' W. P. ulterius die quod
scriptum Obl pda' in Record
Judicii Recupaconis spec, Unde iidem
F. & H. debum pda' in forma pda' re-
cuperaver & scriptum Obl pda' p pda'
fat' F. & J. R. modo hic in Cur plac
sunt unum idemq; scriptum & non al
neq; diversa, Et hoc parat' est verificare
unde ex quo iidem F. & J. debum pda'
dict' p ipsos superius modo petit' in for-
ma pda' jam dudum recuperaver' idem
W. per judic si pda' F. & J. R.
Record Judicii & recupacon' pda' in
omnibus plen' suis robore vigore &
effect' adhuc existen' accon' suam pda'
inde versus eum here debeant, (&c.)

That the
Bonds are
the same.

Cum hoc qd idem C. R. verificare
vult qd Indentur' pda' p dcm'
nuper Regem Carolum primum pda'
J. G. p termino pda' in forma pda' fact'
in omnibus suis plen' robore & effectu
mido sursum reddit' seu cancellat' adhuc
remanet & existit, Qdq; Alumen semp
a pda' tempore consecconis Indentur'
pda' int' pda' nuper Regem & pda'
J. G. hucusq; infra Manium de M.
pda' fact' & operat' fuit, Qdq; hucusque
non fuit aliqua apparens Ratio p uti-
liori conseccon' Aluminis in aliquo al
loco infra hoc Regnu' Angl in Judicio
seu

In Replevin,
Defendant
avows as Bai-
liff, and a-
vers.

Case.

seu determinac'one aliquarum personarum
quarumcunque, &c.

*Quer' pleads
in Bar al
Avoivry, and
then avers.*

*Not except-
ed out of the
Act.*

N. **E**t idem **J. M.** modo quer' ulterius
die qđ Indentur' pzed' in cogn'
pzed' menc'onat' p pzed' nup Dñum Re-
gem pfat' **J. G.** ut pzetetur fact' &
Ure Paten' in Ordine pzed' primo supe-
rius menc'onat' specificat' sunt una &
eadem Charta Concessionis & non alia
neq; diversa, Ac quod pdict' redditus in
Cogn' pzed' menc'onat' non est in Actu
pzed' Except' nec p aliquem al' Actum
Parliamenti disposit'. Et hoc parat' est
verificare, Unde pet' Judic' & dampna
sua occ'one cape'on' & injuste detenc'on'
Aluminis pzedict' sibi adjudicari, (&c.)

Simile

N. **C**um hoc qđ idem **R.** verificare
vult quod pzedict' **W. T.** tempore
mortis sue fuit subdit' de'i Dñi Regis
nunc regni sui Anglie idemq; **R. T.** mo-
do est subdit' dicri Dñi Regis nunc reg-
ni sui Angl', Qđq; nec pzed' **W. T.** nec
pzed' **R. T.** sunt seu eorū alter est per-
sona in Actu pzed' except' qđq; pzed' cri-
men felonie de se p pzed' **W. T.** ppetrat'
non est crimen in Actu pzed' except', Et
hoc parat' est verificare unde ut prius
pet' Judicium & execuc'on' suam de de-
bo & dampnis pzed' recuperat' sibi ad-
judicari, &c.

*That the
Persons are
the same.*

N. **C**um hoc quod idem **R.** verificare
vult qđ pzed' **W. P.** in dicta bil-
la pzed' **T.** superius intestat' nōiat' &
pdict'

pred' W. B. in Record' separal' Judic-
tion pred' superius pstat' intestat' &
nōiat' fuer' una & eadem psona & non
alia neq' diversa, Qd'q' idem A. B. su-
perius in isto plito Administrator &
nominat' pred' A. B. in duobus Judic-
ciis ult' pstat' Administrator nōiat' sunt
un' & eadem psona & non alia neq' di-
versa, (tc.)

Note, That an Averment by the Words, Ablative
Eisdem A. & B. habentibus, &c. is as absolute.
well as Qd' pred' A. & B. fuerunt, &c.
2 Saund. 60, 61.

That in an Assumpsit against an Heir, That the
upon his Promise to pay Monies due upon Heir was ex-
the Bond of his Ancestor, he ought to aver pressly
that the Heirs of the Obligor were expressly bound.
Idem 136.

Note, That the Court will intend a perso-
nal Obligation against an Executor, if he
have Assets, although it is not averr'd, but not
a real Obligation against an Heir, if it be not
expressly alledged.

Note, The Words — Paratus fuit & ob-
tulit performare agreementum pred'
in omnibus ex parte sua performand',
were held a sufficient Averment after Ver-
dict. 2 Saund. 352.

See more, Co. Ent. 542, 578, 583, 586, 594.
1 Co. 9. 69, Plo. 188.

Quarter-Days may be averr'd upon these
general Words, [The usual Feasts.] 2 Ventris
141.

Vide Townsend's Tables, fol. 344. and Corn-
wall's Tables, fol. 336, 337.

Case.

*Que est eadem.**Que est eadem*

IN some Places you have the Words *Que est eadem*, which looks something like an Averment, to shew what is meant.

When used.

They are commonly used in a Justification of a Trespass, &c. which the Defendant says is the same Trespass, the same Imprisonment, the same Beating, &c. complained of in the Declaration. 2 Cro. 372 Kitch. 477.

Justification.

Trespass in *London*; the Defendant justifies by a Warrant the County of N. *Que est eadem rñsgr*, &c. and traverseth that he is guilty in *London vel alibi extra Com R.* and good. 2 Cro 372.

Needs not.

If the Defendant in Trespass justifie the same Day and Place, 'tis not necessary to say, *Que est eadem*, &c. 1 Bulstr. 138. Kelw. 27, 29.

Justification
the same
Day and
Place.

21 H. 7. 39. The same Law is of Goods carried out, if the Defendant justifie at the same Day and Place: And so in Trespass of Battery, if the Defendant justifie; for that the same Day and Place the Plaintiff made an Assault on him; and the Ill which he had was of his own Assault. He needs not in these to say, *It was the same Trespass*.

Needs not.

In false Im-
prisonment.

False Imprisonment by a Woman; the Defendant saith, That she was carried to *Southwark* by her Consent, which is the same Imprisonment, and this is no Plea; for Imprisonment is against the Will of one, and that is not so. 14 H. 6. 2.

Not good.

In Assault
and Battery,
not good.

So in Assault Battery, and Wounding, the Defendant saith, That he laid his Hands upon
the

Case.

the Plaintiff peaceably, and arrested the Plaintiff the same Day, which is the same Assault, Battery, and Wounding; and held it was no Plea, for the Reason aforesaid. 21 H. 7. 49.

Yet in false Imprisonment the Defendant justifies as Sheriff, That he arrested the Plaintiff by a *Capias*; and 'tis good if he say, 'tis the same Trespass, otherwise not. 22 E. 4.

As Sheriff by *Capias*.

Br. False Imprisonment 29.

When the Defendant pleads a Conspiracy that is justifiable, he ought to shew that 'tis the same Conspiracy. 27 H. 8. fol. 2.

Conspiracy.

Annuity is brought of Six and twenty Shillings and Eight Pence. The Defendant saith, He held of the Plaintiff by Six and twenty and Eight Pence of Rent, which is the same Rent, and not good, for it cannot be the same. 32 H. 6. 38.

Not the same.

Debt upon Bond; the Defendant pleads *per Minas*. Plaintiff replies, That he let the Land to the Defendant, rendring Rent; and saith, If he would not seal the Obligation to him for the Rent behind, he would sue him at the Common Law, which is the same Threatening, and is no good Plea; for this is lawful, and not a Threatening. 16 Ed. 4. fol.

Not good.

7. *Bro. Tit. Duress.* 23.

Maintenance; the Defendant says, he carried the Money of him, whom the Plaintiff supposed he maintain'd, to his Counsel, which is the same Maintenance, and no Plea; for this is no Maintenance. 34 H. 6. fol. 19.

Maintenance.

X of

Case.

Of a Traverse.

A Traverse is a Denial of something charged before, and is made by the Words *Ubiq; hoc, &c.*

And } Sometime it is of the Matter;
 } Sometime of the Manner;
 } Sometime of the Day and Year;
 } Sometime of the Place.

Defendant pleads special Matter of Joint-tenancy, and traverses *Quod fuit Tenens, &c.*

Repl', *Quod fuit Tenens*, and a special Traverse of the Matter of the Plea, and Issue thereon. *Vide Rast. Ent. 416.*

Defendant pleads with a Traverse: Plaintiff replies specially with another Traverse, and Issue thereupon. *Rast. Ent. 534, 663. Co. Ent. 170, 294. Hern. 250.*

Issue joined in the same Plea, in which is the Traverse. *Rast. 3, 6, 63, 66, 101, 107, 539, 649.*

Issues upon a Traverse varying from a Traverse. *Rast. 342, 649, 655, 656, 674, 701.*

For Traverse in *Quare Impedit*, *vide Rast. 499, 528. Co. Ent. 485.*

Traverse of
Seisin.

A *Ubiq; hoc quod pdict' R. V. tempore Recognitionis debi p'd eidem J. J. defunct' in brevi de Sed fac' supius mentionat' seu unq'm postea fuit seit' de Mesuagiis p'dict' cum p'm in Unico suo ut de secundo modo & forma put per retor'm h'is*

his de Sed fac p̄dia' allegati', Et hoc,
(Ec.) Unde, (Ec.)

Case.

Trespass for Chasing of Sheep. Defendant justifies *Ut servien'* J. C. they being in his Frank-tenement, called *Church-lays*. Plaintiff replies, and subscribes for Common there. Defendant rejoins, and traverses the Prescription, and Issue joined.

Traverse of
a Prescription.

Et p̄d' J. H. dic' ut p̄ius q̄ p̄e-
dia' pecia terre cum p̄tin' vocal'
C. in qua, Ec. est Et p̄d' tempore quo,
Ec. fuit solum Et libum tēntum p̄fat'
J. C. ppz', Et quia, (Ec.) molliter cu-
gabit Et chasabit put ei bene licuit mo-
do Et forma put ipse idem J. H. supius
inde p̄litando allegabit. Absq̄ hoc
p̄d' p̄dia' W. S. Et omnes ill' quoz sta-
tum idem W. modo hec de Et in p̄dia'
Messuagia a duabus virgat' terre cum
p̄tin' a tempore cujus contrar' memoia
homin' non existit fuer' Ec. (as in the Pre-
scription) tanq̄ ad tēnta p̄dia' cum per-
tin' spectan' Et p̄tin' modo Et forma
p̄out p̄dia' W. S. supius inde replicando
allegabit, Et hoc, (Ec.) Unde ut p̄ius
pet' Judic', Et q̄ p̄dia' W. S. ab ac-
tione sua p̄dia' inde verlus eum habend'
p̄cludatur, Ec.

Traverse.

Et p̄dia' W. S. dic' ut p̄ius q̄ ipse
idem W. S. Et omnes ill' quoz statum (Ec.
as in the Prescription) tanq̄ ad tēnta p̄e-
dia' cum p̄tin' spectan' Et p̄tin' modo Et
forma p̄out ipse idem W. S. supius inde re-
plicando allegabit, Et hoc pet' q̄ in-
quiratur

Case. quiratur per Patriam, Et pzed' A. B. inde, &c. Ideo ven' inde Iur', &c.

Traverse of
a Custom
Protestando.

averse.

Et pzed' A. B. C. D. A. C. & C. D. protestando non cogn' aliqua per pzed' O. supius in barr' pstat' fore vera dicunt ut prius qđ ipsi iidem A. B. C. & C. ut Ballivi pstat' B. B. & U. C. bene cogn' capcon' averioꝝ pzed' in pzed' locis in quibus, &c. herbam ibi crescen' depascen' & dampnum ibi facien' pꝛout ipsi iidem A. B. C. & C. p cogn' suam pzed' supius inde allegaver', Absqꝫ hoc qđ infra Manerium de B. pzed' hete' seu a toto tempore cujus contr' memoria homin' non existit talis habeat' consuetudo qđ omnes tenen' custumar' tenitoꝝ custumarioꝝ Manerii de B. pzed' huerunt seu here consuever' solam & separat' pastur' in pedia' locis in quibus. &c.) annuatim & quolibet anno p totum annum ad eoz libitum tanqđ ad resta sua custumar' pzed' pcedan' modo & forma pꝛout pzed' O. p barr' suam ad cognicoꝝ ipsoꝝ A. B. C. & C. supius inde suppon', Et hoc parat' sunt verificare, Unde ut prius pet' iudicium & retoꝝ Averioꝝ pzed' unacum dampnis & expens' suis in hac parte sustent' juxta formam Statut' pedia' sibi adjudicari.

Issue.

Et pzed' O. dic' (ut prius) quod infra pzed' Manerium de B. hete' & a toto tempore, (&c.) modo & forma pꝛout ipse idem O. in barram ad cogn' pzed' supius suppon', Et hoc pet' qđ inquiratur per

per Patriam, Et p̄dia' R. R. R. & C. in-
de s̄it', Nō p̄cept' est Dic, (Ec.)

Case.

Trespass of Assault and Battery, and False
Imprisonment, 1 April' 18 Car. 2. Regis, apud
Burgum de Marr' vi & armis, &c.

ff. **A**S to the Assault and Battery, Defen-
dant pleads *Son assault demesne* ;
and as to the Imprisonment, except 11 Hours,
Non cul', and as to that, he says it was done
10 Jan. 16. Regis apud Civit' Conbentr'
in Com ejusdem Civitatis, and then
shews that he did it as Sheriff, and wherefore.
*Que quidem imprisonamentum & in p̄zi-
sona detentio ipsius C. L. per spatium
11 horaz p̄dia' ex occasione ill' p̄d fact' est
eadem transgr' quoad imprisonament' &
in p̄zison' detenc' p̄fat' C. p̄ spatium illud
unde ipse idem C. superius se modo que-
ritr', Absq̄ hoc quod p̄d C. R. est culpa-
bilis de transgr' ill' infra p̄d Burgum
Marr' vel alibi extra p̄d Civit' Cobentr',
Et absque hoc qđ p̄zed' C. R. est Cul' de
t̄nsgr' ill' p̄zed' p̄mo die April' seu ad a-
liquod al' tempus anteqm idem C. R.
fuit un' Dic Com Civit' p̄zed' seu post-
quam idem C. R. ab om̄e ill' amotus
fuiſſet put ip̄d idem C. L. superius inde
versus eum queritr', Et hoc (Ec.) Un-
de (Ec.) Quer' Demur', Et Det' junq̄
in moꝝac.*

Traverse of
Time and
Place.

1. Traverse.

2. Traverse

Case.

Defendant justifies by Sheriff's Warrant,
and traverses.

Simile.

ff. **A**bsq hoc qd p̄r n. est culpabilis
de aliqua verbatōe & insult'
ante p̄r vicesimum diem Octob anno su-
p̄radco seu ad aliquod tempus postea,
Et hoc (Ec.) Unde (Ec.)

Several Tra-
verses in one
Plea.

In some Cases there are several Traverses to be taken in one Plea; as he that is to traverse an Office, ought to avoid or traverse every of the King's Titles alledged.

The Defendant in Trespass did plead a Gift in Tail to his Father, and gave Colour, and the Plaintiff made Title by a common Recovery; to which the Defendant did rejoin, That his Father before the Recovery made a Feoffment, and took an Estate back again; and then after the Recovery, and before Execution, died: *Absq hoc*, That the Recoverer enter'd in the Life of his Father; *Et absque hoc*, That his Father had no other Estate tempore Brevis; *Et absque hoc*, That the Recoverer was as in the Recovery specified, &c. and it was admitted. *Vide 12 Ed. 4. 14, & 19.*

Traverse,
when good.

If one will take a Traverse to a Declaration, he ought to traverse that Part of it, that the Doing thereof will make an End of the Matter, for which the Plaintiff declares, and then is the Traverse good.

Not needful.

Where the Defendant hath confessed, and avoided all the Matter that is contained in the
De-

Declaration, there he need not to take a Traverse. Case.

Where the Defendant hath given a particular Answer in his Plea to all the material Matters contained in the Declaration, there he needs not to take a Traverse; for when the Thing is answered, there needs no further Denial, which is the Nature of a Traverse. Plea answered. Traverse not needful.

As to those Words in the Traverse, *Modo & forma* put; first, it is to be known that the Words *Modo & forma* in Pleading are sometimes but Form, sometimes an essential Part and Substance of the Issue. *Modo & forma prout, &c.*

Where the Issue taken by it self goeth to the Point of the Writ or Action, there *Modo & forma* are but Words of Form. When Words of Form.

But it is otherwise when a collateral Point in Pleading is traversed. — As if a Feoffment be alledged by two, and this is traversed *Modo & forma*, and it is found the Feoffment of one, there *Modo & forma* are material. When material upon collateral Point.

So if a Feoffment be pleaded by Deed, and it is traversed *Abſq; hoc qđ feoffabit modo & forma*; upon this collateral Issue, *Modo & forma* are so essential, as that the Jury cannot find a Feoffment without Deed. *Co. Lit. 281. b.* Essential.

And there is another Diversity to be observed, *viz.* That though the Issue be upon a collateral Point, yet if by finding of Part of the Issue it appears to the Court that no such Action lies for the Plaintiff, no more than if the Whole had been found, there the Words *Modo & forma* are only Words of Form. When only Words of Form upon a collateral Point.

Case.

Co. Lit. 281. *b.* 10 *Ed.* 4. 7. 18 *Ed.* 4. 81.
21 *Ed.* 4. 3.

Traverse
the Manner
and Matter
in Issue.

2 *Roll.* 708. Where a Traverse is with a *Modo & forma, &c.* that will put the Manner as well as the Matter in Issue, where the Manner is material, as the Time, the Fact, and other Circumstances, when they are the Effect of the Issue.

Negative
Pregnant.

And many Times where the Party makes no Traverse, his Plea is called a Negative Pregnant, and therefore ill.

*Modo & for-
ma declarata.*

For a Negative Pregnant is a Sort of Confession of an Affirmative; as if a Man being impleaded to have done a Thing upon such a Day, or in such a Place, denieth that he did it *Modo & forma declarat'*; this implieth nevertheless that in some Sort he did it. *Vide Dyer, fo. 12. nu. 95. Kitch. fo. 232.*

Ought to tra-
verse one or
other.

In Trespass, the Defendant justified by Licence from the Plaintiff's Son: Plaintiff replies, *Quod non intrabit per licenciam suam*; this is called a Negative Pregnant, for he ought to traverse the Licence by it self, or the Entry by it self. 2 *Cro.* 87.

Two Matters
in one Plea.

So when two Matters are put in Issue in one Plea, and for the Incertainty upon which of the Matters the Defendant doth insist, the Plaintiff cannot tell in which to join Issue; this is a Negative Pregnant.

Example
negligent
keeping of
Fire.

And it was said in an Action on the Case, for burning the Plaintiff's House by negligent keeping of his Fire. The Defendant pleaded, that the House was not burnt by him in Default of well keeping of his Fire. That such Plea is a Negative Pregnant; First, That the
House

House was burnt. Secondly, That it was not burnt in Default of well keeping. *Sed quære*, 28 H. 6. 7.

Case.

In Trespafs for cutting of Trees the Defendant pleaded the Commandment of the Lessor to cut the Trees, and give them to a Stranger. The Lessor replied, That he did not cut the Trees by his Commandment; it was held a Negative Pregnant: Whereupon he mended his Replication, and said, That he did not command him. 21 H. 6. 46, 37. *Vide* 37 H. 6. 7. *Bro. Trav.* 325.

Commandment to cut Trees pleaded.

For Goods imbezzelled in Default of an Inn-keeper, he pleaded, They were not taken in his Default; and held a Negative Pregnant, and that he ought not to plead the special Matter. 22 H. 6. 38, 39.

Special Matter to be pleaded.

If Defendant pleads, That the Beasts died in Pound overt in Default of the Plaintiff; and if the Plaintiff replies, *Abſq; hoc*, that the Beasts died in his Default generally, 'tis a good Plea; but if he says, *Abſq; hoc*, that they died in the Pound overt, it is a Negative Pregnant. 5 H. 7. 9.

Beasts died in Pound overt.

But it seems that the Defect of a Traverse pleaded is only Form, and if the Default thereof is not shewn by Demurrer, it is avoided by the Statute. 1 Cro. 324. 1 Leon. 44.

Defect of traverse helped.

It is said to be a general Rule, that where a Thing alledged doth confess and avoid my Plea, I may traverse it. 7 H. 6. 13 *Eliz. Dyer*.

Rule to traverse.

If a Traverse concludes to the Country, it is good to demur specially, and shew it.

Concludes to the Country.

It's said, Matter of Supposal ought to be avoided by Matter impleaded, without any Traverse.

Matter of Supposal.

In

Case.

Ancient Demesne Matter of Supposal.

Place of making Bond Matter of Supposal.

Time of Age Matter of Supposal.

When no Negative comes before.

One Traverse enough to make a perfect Issue.

Traverse upon Traverse.

In a *Præcipe quæ reddat*, ancient Demesne is a good Plea without a Traverse, because 'tis only Matter of Supposal. 5 H. 7, 13.

In Debt upon Bond, the Plaintiff said, that the Bond was made at B. 'tis a good Plea for the Defendant to say, that the Bond was made at S. *p Dures* without any Traverse, because 'tis only Matter of Supposal. 22 E. 4. 40. a.

In Debt, the Plaintiff said, that the Bond was made by the Defendant, being at full Age at the Time of the making thereof; in this Case the Age is not traversable, because 'tis only Matter of Supposal. 15 Ed. 4. 32.

If no Negative comes before, an Affirmative will serve without an *Abſq̄ hoc*, as the Plaintiff that appears may say, *J. S.* that appears is *J. S.* of *D.* and the Party sued is intended to be *J. S.* of *C.* without any Traverse. 33 H. 6. 10.

If a Tenant does first take his Traverse, the Demandant ought not to take his Traverse, for one Traverse is enough to make a perfect Issue: But where all the Tenants plead jointly with a Stranger, they may not take any Traverse. But 'tis otherwise where two make Default, and the other two plead it. 34 H. 6. 16, 17.

Yet in some Cases it's said there may be a Traverse upon a Traverse, as 9 H. 6. 1 & 2. where in a *Præcipe* against two, one pleaded *Non tenure*, and the other Jointenancy with a Stranger, and traversed, *Abſq̄ hoc*, that the other had any Thing. And the Plaintiff replied, That the Defendants are Tenants the

the Writ supposeth; and traverseth, *Abſq̃ hoc*, Case. that the Stranger had any Thing.

In Trespass by two, the Defendant said that one of the Plaintiffs is dead; 'tis no Plea for the Plaintiff to say that he is alive, without traversing that he is not dead. 35 H. 6. 50. Plaintiff says Defendant is alive and not dead,

The Defendant justified in another Vill in the same County without traverse, and it was good. 35 H. 6. 50, 51. Vill.

If an Issue be joined upon a Negative, there ought to be no Traverse; as where the Issue was, that the Plaintiff was there to receive the Money, and the Defendant was not there to pay it, 'tis sufficient for the Defendant to say that he was present there, and he need not traverse, *Abſq̃ hoc*, that the Plaintiff was there. 36 H. 6. 15. Issue joined upon a Negative. No Traverse.

In Debt against one as Executor, 'tis no Plea to say that he died Intestate, without traversing that he made him Executor, because he might first make him Executor, and afterwards die Intestate. 7 H. 6. 13, 14. Traverse that he made him Executor.

So in Conspiracy, to justify by a legal Conspiracy without Traverse is not good. Conspiracy.

If the Defendant alledge a certain Place in his Bar, the Plaintiff ought not to traverse it in his Replication: But 'tis otherwise in Replevin, for the Plaintiff in Replevin ought to traverse the Place alledged by the Defendant in his Avowry. 22 E. 4. 50. b. 51. a. Place in Bar not to be traversed in Repl. Execution in Replevin.

Note, That two Affirmatives in Pleading cannot make Issue; and therefore, where one dying seised in Fee is alledged by the Defendant, and the Plaintiff alleges one dying seised in Tail, he ought to traverse the dying Affirmative, one must be traversed.
in

- Case.** in Fee; and so it ought to be in all Cases, unless in an Affize, or Writ of Entry in the Nature of an Affize. 5 H. 7. 11, 12. *Vide* 18 H. 6. 8, 9.
- Exception in Affize.**
- Defendant ought not to traverse where he confesses more.** The Defendant says, The Plaintiff leased him 26 Acres, and 4 Acres more, without that, that he demised him 26 Acres only; 'tis said the Defendant ought not to traverse, but the Plaintiff. 29 H. 8. *Dyer* 320. *Vide* 1 *Saund.* 207, 209.
- Two Villis in one County.** In Battery in two Villis, Justification in the one without traversing the other is sufficient, if both were in one County. 20 H. 6. 4.
- Full Age averr'd.** If one aver the Defendant of full Age, he need not traverse, and not within Age, 19 H. 6. 54.
- Consideration.** A Consideration averred to an Use is traversable, and it is issuable. 4 H. 7. 9. 6 *Ed.* 4. 12. Yet the Consideration in an Assumpsit is not traversable, but the one Issue must be pleaded, and the Consideration given in Evidence. *Het.* 59. *Sed vide* *Hob.* 128. 1 *Cro.* 201, 250, 373. where 'tis said it may, if it be executory.
- Assumpsit.**
- Ratione cuius* not traversable.** The Words *Ratione cuius* in Pleading are not traversable. 11 *Co.* 106.
- Causes of Refusal.** The Cause of refusing a Clerk is traversable, because the Proceedings are not of Record. 5 *Co.* 57.
- Letters Patents.** Letters Patents pleaded, or shewn under the Great Seal cannot be denied. 6 *Co.* 15. *b.*
- Intrusion.** In Intrusion, the Intrusion is traversable. 3 H. 7. 7.
- Feoffment to Persons unknown.** A Feoffment alledged to Persons unknown is not traversable, but the taking of the Profits. 4 H. 7. 9. *Vide* 5 *Co.* 77. *a.* In

In Trespass where both the Plaintiff and Defendant claimed a Sale, the Time of the Sale, and not the Day of the Sale, was traversed. 21 H. 6. 40, 41. Case. Time and not the Day traversed.

If one pray Aid of the King, the Cause is not traversable. 28 H. 6. 4. Aid of the King.

Nothing in the *Alias dictus* is traversable 32 H. 6. 28. *Alias dictus.*

In Detinue of Charters, where the Defendant does not confess any Possession in the Plaintiff, the Bailment is not traversable. 34 H. 6. 42. Bailment in Detinue.

If the Writ suppose one died Intestate, it seems the Defendant may traverse, and say that he made a Will. 7 Eliz. Dyer 236. That he made a Will.

'Tis said for a Rule, That that which comes after *Nuper* is not traversable, if that the Party be not charged by Vertue of his Office, as if it be said in pleading, *Nuper Vicecomes*, or *Nup Escheator*. 38 H. 6. 18. *Nuper Vicecomes.*

A Matter not alledged in the Count ought not to be traversed. 28 H. 6. 35. Matter not in the Count.

The Release alledged in Pleading was traversed, and not the Disseisin. 30 H. 6. 7. Release traversed.

In Trespass where the Defendant justified by Commandment, the Plaintiff traversed the Commandment, and pleaded a Lease at Will to him made by the same Person, and good. 37 H. 6. 7. Commandment.

In a *Partitio facienda* 'tis a good Traverse, That they held not the Lands in Common. 39 H. 6. 19. Partition.

If one justifie for Common appendant, the other Party ought to traverse the Common generally, and not as the Defendant alledged. 40 Ed. 3. 10 b. Common appendant.

When

Case.

When a general * Traverse sufficeth, & *e converso*. *Vide* 8 *Ed.* 4. 3. 32 *H.* 6. 6.

* Traverse
general and
special.

* Seisin tra-
versed.

When the * Seisin shall be traversed, and when the Tenure, and when not. *Vide* *F. N. B.* 209. *a.* 5 *Ed.* 4. 6, 9. 10 *H.* 6. 24. 20 *H.* 6. 20. 4 *Co.* 11. *a.* 6 *Co.* 24. *b.* Where the Dying seised, or Discent. 19 *H.* 8. *Br. Traverse* 6. 22. *H.* 7. 31.

Dying seised,
or Abate-
ment.

Where the Dying seised, or Abatement, traversable. *Vide* 18 *Ed.* 4. 1. 26. 5 *Ed.* 4. 137. 85. 3 *H.* 7. 7. 39 *H.* 6. 26, 27. 38 *H.* 6. 22.

Dying seised
Conveyance,
or Disseisin.

Where Dying seised, Conveyance, or Disseisin, traversable. *Vide* *Dyer Eliz.* 365. 5 *Ed.* 4. 5. 15 *Ed.* 4. 22. *Bro. Tit.* 218, 360. 30 *H.* 6. 7.

Seisin in Fee.

Where Seisin in Fee alledged shall be traversed. *Vide* 26. *H.* 8. 4. 11 *Ed.* 4. 11. 33 *H.* 6. 49. 5 *Ed.* 4. 1. 18 *Ed.* 4. 3. *Bro. Traverse* 372. *Dyer* 365.

Aliquo modo.

Of Traversing by the Words, *Aliquo alio modo*. See 22 *H.* 6. 35. 5 *Ed.* 4. 119. 4 *Ed.* 4. 13. 13 *H.* 6. 13.

Conveyances
when and
what.

When one ought to traverse the Conveyances, and what Conveyances, and *e converso*. *Vide* 43 *Ed.* 3. 7. 22 *Ed.* 4. 29 *b.* 5 *Ed.* 4. 9. 163. *a.* 134. *b.* 33 *H.* 6. 38. 9 *H.* 6. 22. 2 *H.* 7. 8. 10 *H.* 7. 8. 2 *Ma.* 107. 6 *Co.* 24. 27 *H.* 8. 2 & 3. 15 *H.* 7. 2, 3, 11.

Time tra-
versed.

When the Traverse ought to extend as well to the Time after the Day alledged in the Pleading, as before, and *e converso*, *L.* 5 *Ed.* 4. 12. 124. 21 *Ed.* 4. 66. *b.* 12 *Ed.* 4. 6. 21 *H.* 6. 40. 22 *H.* 6. 49 *b.* 50. *a.* 30 *H.* 4. 33 *H.* 6. 13. 13 *H.* 6. 1, 3. 19 *H.* 6. 47. 37 *H.* 6. 37.

The Defendant * traversed the Day where it was not material, and yet the Plea allowed. *1 Saund. Rep. 14.*

Whether a † Traverse may be taken after a Traverse, or not. *Idem 21, 22, 23.*
2 Saund. 5. 28.

* A Matter sufficiently confessed and avoided shall not be traversed. 22, 23.

Where the Plaintiff counts of one Demise, and the Defendant pleads another different Demise, he ought to traverse the Demise in the Count. *Idem 207, 209.*

Where the Surplusage which is mentioned in the Plea of the Defendant, and not supposed by the Declaration shall be traversed by the Plaintiff, and where not. *Idem 207, 208, 209.*

Where the Traverse ought to come on the Part of the Plaintiff, and where on the Part of the Defendant. *Idem ibid.*

Where the precise Traverse of the entire Time makes the Plea ill. *Idem 269.*

The Defendant confesses and justifies the Fact, and yet traverses, *Abſq̃ hoc*, that he had done it *aliter aut alio modo qm̃ sic ut p̃fertur*. *Quare*, If a good Traverse. *Idem 312.*

Where the *Ratione* tenure ought to be traversed, and not the Encroachment, *2 Saund. 160, 161.*

Where the Plaintiff by alledging more than he ought in his Declaration, gives the other Party Advantage to traverse it. *Idem 206.*

Case.

* Traverse of Day immaterial, and allowed.

† Q. of a Traverse upon a Traverse.

* Matter confessed and avoided.

Demise in the Count.

Surplusage in the Plea.

Where on the Part of the Plaintiff or Defendant.

Entire Time. Justification and Traverse.

Ratione tenure, Encroachment.

Advantage of Traverse.

Where

Case.
Where in
the Disjunctive.
Aliter.

Where the Traverse ought to be in the Disjunctive, and not in the Conjunctive. *Idem* 206, 257.

Where in an Action for Damages only, the Defendant traverses in the Disjunctive the several Losses alledged in the Declaration, he may give in Evidence any Matter to excuse himself of any of them. *Ibidem* 207.

When the
Day ought
to be traversed.

Where in Trespass the Day ought to be traversed, and where not. *Idem* 295.

In Battery, *Abſq̃ hoc qđ immoderate caſtigabit*, is no direct Traverse to the Defendant's Justification, yet good after Verdict. *I Ventr.* 70.

A Traverse designed to bring a collateral Matter in Question not allowed. *Idem* 77.

The Plaintiff replies, That the Action was commenced for another Cause, and not for the same; *Abſq̃ hoc*, that it was for the same, and good upon special Demurrer, because it puts the Matter more singly in Issue.

For the Defendant to traverse Matter not alledged, good Cause for the Plaintiff to demur. *Idem* 79.

Where a Traverse that might have been omitted is Cause of Demurrer. *Idem* 212.

A Traverse is impertinent where the Matter is confessed and avoided. *Idem* 283.

The Plaintiff by Replication says, He was arrested upon a Bill returnable *die Sabbati & non die Veneris*. Defendant rejoins, That he was taken upon a Bill returnable *die Veneris*; *Abſq̃ hoc*, that he was taken *virtute Bille ret' die Sabbati*. The Plaintiff demurr'd, and his Council said it was a Traverse upon a Traverse, for that the *Et non*

non die Veneris by the Plaintiff was a Traverse: The Defendant said, It was not such a Traverse of which the Books speak, that a Traverse may not be taken upon a Traverse, and that the **die Sabbati** was only traversable and triable. The Plaintiff had nevertheless Leave to continue, notwithstanding the Demurrer and Argument, because the Defendant would not agree to accept Issue upon the Traverse, nor put in Bail upon the Original Action. *Vide 1 Lev. 192.*

It was held an ill Traverse, That the Court was held **coram Majore**, according to Custom, which was Matter of Record, and not triable **per Pais**, and also joining Matter of Custom with it which is triable **per Pais**. It was also held a Fault where the Traverse made the Day Part of the Issue. *Idem 193.*

The Sheriff upon justifying Arresting a Man for Breach of the Peace, traversed all the Time before he was Sheriff or after, and held good, tho' it was objected to be too large. *Idem 216.*

A Fact laid 1 *Nov.* and justified the 2d of *November*, **que est eadem**, held good without Traverse. *Idem 241.*

That which comes after the Word [**scilicet**] was held not to be traversable. *Idem. 245.*

Debt upon a Lease of Four Acres; Defendant pleads, that the Lease was of Five Acres, and an Entry into the Fifth: he ought to traverse the Lease **de quatuor Acris tantum**. *Idem 263.*

In Trespass for chasing his Cattle, **Ita quod** one of them died, held that what was after
Y
the

Case.

the *Ita quod* for Aggravation of Damages need not be traversed. *Idem* 283.

Defendant justifies Taking the Goods Damage-feasant, after the Quarter demised was expired, and traversed he took of them the 9th of *October*, or any Time within the Quarter. Plaintiff replied, *De injur sua propz' absq' illi Causa*. The Replication on the Demurrer was held ill, the Plea in Bar containing Title; but the Traverse was held ill, and Judgment for the Plaintiff. It seems he should have traversed the 9th of *October*, or any Time before the 23d of *July*, or during the Quarter of the Year. *Idem* 307.

Idem 2 Part 81. In Trespass it was said, An Issue upon the Traverse would be *un Testail*, and that it ought to have been before the *Teste* of the Writ, or after the Return, *Sed non allocatur*. for the Traverse was in Prejudice of the Defendant, and not of the Plaintiff.

See Traverse after a Traverse upon an Indictment for not repairing a Bridge, Issue upon the last Traverse, and Defendants found guilty upon the first. 2 *Lev.* 112.

Absq' hoc aliter vel alio modo vel alibi, Issue thereupon, and Verdict, and quashed for the Incertainty. *Idem* 164.

The Defendant pleads 23 *H. 6.* and says he was imprisoned by a Writ returnable *Quinden Martini*. The Sheriff by Replication shews a Writ returnable *Ottah*, and traverses the Writ returnable *Quinden Martini*: The Court upon Demurrer held the Traverse well enough, being a Traverse of the most material

material Thing pleaded in Bar to avoid the Bond. *Idem* 174.

Error of a Judgment in an inferior Court, for that the Judge had not taken the Oaths, &c. The Defendant pleaded the Oaths, and Declaration was not tender'd to the Sheriff; the Plaintiff demurr'd. The Court held clearly that the Tender was traversable. *Idem* 243.

The Defendant made Conusance as Bailiff of J. S. in Replevin: Plaintiff in Bar says, He took the Distress without the Command of J. S. who had first Notice thereof such a Day, and then disavowed the Taking. Defendant demurred generally, and the Court held the Bar ill; for he ought to have traversed his being Bailiff, and it was ruled to replead to and mend his Bar, paying Costs, and to go to Trial, If Bailiff or not. *Vide* 3 Lev. 20.

Adjudged, a Traverse of Day and Place was multifarious, and that he ought to have traversed one sole Point, and not both alike *Idem* 41.

It was held in Trespass, That the Traversing the Command of the Bailiff to prevent a Rescue was ill, for the Defendants might do it well enough on their own Head to prevent a Rescue, being a Breach of the Peace. 3 Lev. 113.

Idem 167. It was held, That the Traverse contain'd more than was alledged in the Breach, scilicet secundum veram intentionem Indentur, and that the Intent of the Indenture is not traversable.

In Trespass for five Loads of Hay, the Defendant justified for Tythes; the Plaintiff traversed the Quantity of the Tythes, and held

Case.

ill upon Demurrer, the Quantity being not traversable. *Idem* 228.

In Count upon a Writ of Waste, the Plaintiff entitled himself to the Reversion by Discent: The Defendant pleaded in Abatement, that his Title was by Devise, &c. and then traversed the Discent, and held good upon a general Demurrer. *Vide* 2 *Lut.* 1558.

Idem 1632. It is said to be a Rule in Law, That when particular Estates are in Dispute, the first, and not the Last, ought to be traversed. *Vide* 2 *Vent.* 212.

Idem 2 *Lut* 1287. It was resolved, That the Traversing of the Delivery of a *Ca' Sa'* to the Sheriff was not material, as 2 *Lev.* 19. For if in Truth a Writ be sued out, altho' the Sheriff makes a Warrant before it comes to his Hands, 'tis legal, and the Precedents are both Ways. 1 *Saund.* 299. where it shall be intended that the Writ was delivered before the Arrest.

Defendant justifies as being seized of the Tythes, entring the Close to take five Loads of Tythes sever'd. Repl', *De injur sua propz'*, and traverses that the Five Loads of Tythes were sever'd. Demurrer with Causes, and Judgment that the Bar was well pleaded, and that the Traverse was ill. *Idem* 1313. 1316. *Vide* 3 *Lev.* 228.

Defendants justifie putting their Cattle into the Field, and plead that they escaped into the Plaintiff's Closes for Default of Inclosure, whereupon they enter'd and chased them out. Repl', *De injur' sua propz'*, with a Traverse of the Escape, *Modo & forma*. Upon Demurrer the Traverse was held good.

2 *Lut.*

2 *Lut.* 1437. Held that in transitory Actions, as for Battery and Taking of Goods, the Plaintiff may alledge the Tort done, not only in any other Vill, but also in another County, and the Place may not be traversed without special Cause of Justification, which extends to some certain Place. Also that if the special Matter alledged by the Defendant in a foreign County be false, the Plaintiff may maintain his Action, and traverse the special Matter alledged by the Defendant, and a Traverse in such Case may be upon a Traverse, when Falsity is used to oust the Plaintiff of the Benefit which the Law gives him. 3 *Cro.* 99. *Moor* 350. 1 *Institut.* 282. b.

Defendants in Battery justifie Arresting the Wife upon a *Capias ad respond*, and that she assaulted them, &c. Repl', *De injur' sua prop' absq' illi Warranto Et hoc per, &c.* The Defendants upon their Demurrer said, The Traverse ought to be *Absq' hoc quod fuit tale Warrantum. Sed non al-locatur.* And Judgment *pro Quer'*, because it was not shewn in the Bar out of what Court the *Capias* issued. 2 *Lut.* 1458, 1460.

Idem 1471, & 1479. Demurrer, for that the Defendants in Trespass had traversed Matter not traversable: Judgment that the Traverse was ill, and also that the Bar was ill, because it was pleaded that the Bailiff had appointed such a Number of Trees to be cut for Repairs. *Et Judic p Quer'.*

Where Death ought or may be traversed. 1 *Lut.* 14.

If one pleads good Matter but does not rely upon it, but makes it only an Inducement

Case.

to other Matter, it will not avail him, and he thereby gives Liberty to the other Party to traverse the last Matter. 1 *Lut.* 108.

Where the Sufficiency of Common may be traversed. *Idem* 107.

In Debt for Fees of Knighthood, in the Count it is alledged that the Defendant voluntarily took upon him the said Degree. Bar, That he took it in sole Obedience to the King's Command; ill without a Traverse. *Idem* 380, 381.

In an Action for an Escape, the Plaintiff declared upon a voluntary Escape: Bar, That he retook the Prisoner upon fresh Pursuit, and held good, without a Traverse of the voluntary Escape. *Idem* 382.

When the Plaintiff by a Traverse in his Replication locks upon the Defendant so that he cannot rejoin, held ill upon Demurrer: Also the Bar ill, and the general Rule is, That Judgment shall be against him that commits the first Fault, yet it is said not to be so in the Case of an Award pleaded. *Idem* 529. *Vide* 2 *Bul.* 28. & *Godb.* 255.

Where one needs not traverse a Seisin in Fee, found by Inquisition upon an Outlary of Treason to be in the King. *Idem* 1008.

In Trespass for Battery at H. Defendant justifies *per mollit' manus imposuit*, in Defence of the Possession of his Close in C. Replication, That in the Close there was a Way by Permission, by which he enter'd, and the Plaintiff violently assaulted him, *Abſq; hoc quod molliter manus imposuit*, held to be no Departure, and the Traverse adjudged good. 2 *Lut.* 1435. 1437. *Vide ante.*

Where

Where the Traverse of the Jurisdiction of an inferior Court will not hurt upon a general Demurrer, &c. *Idem* 1560, 1563.

Where the Inducement to a Traverse may be traversed. *Idem* 1630, 1632, &c.

Bar sur Assumpsit.

Et p[re]d' C. B. p[er] Atto[r]em suu[m] ven' & defend' vim & injur' quando, &c. Et quoad p[ar]tia' sexdecim libras novem solidos & octo denar' de debito quos p[ar]tia' W. virtute prime p[ro]missionis & assumptionis p[ar]tia' superius versus eum exigit die quod ip[s]e non Assumpsit sup[er] se modo & forma put p[re]d' W. superius versus eum queritur, Et de hoc pon[itur] se super p[re]t[er]itum, Et p[ar]tia' W. inde similiter, Et quoad p[ar]tia' undecim lib[ras] quas p[ar]tia' W. p[er] Cannabe eidem C. delibari supposit' virtute secunde p[ro]missionis & Assumptionis p[ar]tia' superius versus eum exigit die q[uo]d p[ar]tia' W. Actionem suam p[er] inde versus eum h[ab]ere seu manutenere non debet, Quia die q[uo]d p[ar]tia' duodecimo die Novemb[ris] Anno D[omi]ni Millimo sexcentesimo nonagesimo primo quo die suppon[itur] Cannabem p[ar]tia' eidem C. delibari quidam J. P. de Wapping in paroch[ia] de Stepney in Com[itu] Midd[le]x Sailmaker indebitat' fuit eidem C. in (&c.) legalis monete Angl' p[ro] funibus (Anglice Bolt Ropes) p[re]st[is] J. P. p[er] eundem C. antetunc vendit', Et sic indebitat' existit' p[ar]tia' J. P. colloquium fuit cum p[re]st[is] W. de Cannabe p[ar]tia' eidem C. in Satisfactione debi sui p[ar]tia' deliband

To a Declaration upon two Promises: Defendant pleads to the first, *Non Assumpsit*, To the second, That the Plaintiff by Agreement delivered the Goods in the Name of a third Person to the Defendants, for and in Satisfaction of Money to him due by the third Person.

Case.

band' super quo postea scilicet eodm̄ duoz
decimo die Novemb' Anno Dñi Mil-
lmo sexcentesimo nonagesimo primo su-
pradiā' apud London' pdia' in Parochia
& Warda pdictis pdia' W. per agreea-
mentū inter ipsum & p̄fear' J. P. ha-
bit' delibabit eidm̄ C. Cannabem p̄e-
dia' in nomine p̄edia' J. P. in satis-
factionem debi sui pdia' absque aliqua
Conditione & absq̄ aliqua promissione seu
Assumptione p̄ ipsum C. vii' vel fact' ad
solvend' p̄o Cannabē pdia' W. tant' pe-
cunie quant' ipse p̄oinde mereretur here
p̄out pdia' W. p̄ Narrationem suam p̄e-
dia' superius allegabit Et hoc idem C.
parat' est verificare unde petit iudiciū
si pdia' W. Accōnem suam pdia' inde
versus eum here debeat, &c.

Bar sur Assumpsit.

*Al' Cas' de
averiis empt'
Bar', Qd' def
solvit partem
& vellet sol-
vere resid' si
quer' voluisset
deliberare ave-
ria.*

Actionē non, &c. Quia die qđ bene &
verum est qđ ipse idem S. Assump-
sit super se modo & forma p̄out pdia' W.
p̄ Narrationem suam pdictam superius
suppon' Qđq̄ pdicta' W. similiter deli-
babit eidem S. p̄edia' tres Bobes in
Parr' p̄edia' mentionat' sed p̄ed' S. ul-
terius die qđ ipse idem S. solvit p̄dicto
W. p̄o p̄ed' bobus summam quindecim
librar' legis monete Angl' parcell' p̄ed'
virgine' Librar' & post promission' & Ac-
sumptionē ipsius S. p̄edia' in forma p̄ed'
fact' parat' fuit ad solvend' summam
quindecim Librarum p̄ed' triginta lib.
resid' si p̄edia' W. Vaccas p̄ed' ad vel
ante

ante p̄dicu' festu' A. in Parr' p̄dict' men-
 tonat' deliberare voluisset quas quidm
 Vaccas p̄dict' S. eundem M. ante pre-
 dia' festu' A. deliberare requisivit scdm
 Agreementu' p̄dict' sed p̄dict' M. Vaccas
 illi eidem S. ante p̄dictum festu' A. vel
 sup idem festum deliberare omnino recu-
 savit, Abseq̄ hoc qđ p̄dicta' M. usque
 & ad p̄dict' festum A. parat' fuit & ob-
 tulit deliberare eidem S. Vaccas p̄dicta'
 put p̄dicta' M. per Narratōem suam
 p̄dictam superius suppon', Et hoc (Ec.)
 Unde, &c.

Precludi non, (Ec.) Quia protestando
 qđ p̄dicta' S. non solvit eidem M. sum-
 mam quindecim libraru' pro bobus p̄-
 dicta' prout p̄dicta' S. superius p̄litando
 allegavit pro placito idem M. ut prius
 dic qđ idem M. a tempore p̄missionis
 & assumptionis p̄dicta' S. p̄dicta' usq̄ & ad
 p̄dicta' festum A. parat' fuit & obtulit
 ad deliberandū p̄stat' S. Vaccas prout ipse
 p Parr' suam p̄dicta' superius suppon',
 Et hoc petit qđ inquiratur p p̄riam, Et
 p̄dict' S. similiter, &c. Id, &c.

Vide Bro. 93. Bro. Vad. 107.

Quando (Ec.) Et idem D. protestando
 qđ p̄dicta' separata p̄mission' & as-
 sumptōem in Parr' p̄dict' superius speci-
 ficat' sunt pro una & eadem causa accōnis
 & non pro diversis pro p̄lito idem D.
 dic quoad receptōem p̄dict' S. uxoris
 ipsius D. & p̄dict' J. R. serbient' ejus-
 dem S. p p̄dict' W. C. in domu' suam
 acetiam invenien' & providen' p̄dict' ri-
 bum

Bar.

Protestando
 qđ Def' non sol-
 vit partem pro
 placito dic' qđ
 Quer' parat'
 fuit & obtulit
 ad deliberand'
 vaccas prout
 &c. Exit' su-
 perinde.

Bar.

Pro esculent'
 invent' pro
 uxore Def' qđ
 quoad talem
 diem non as-
 sumpsit & po-
 stea uxor' ab-
 sentavit contra
 volunt' Def' &
 Def' noticiam
 inde dedit.

Case.

hum pot' lect' labac'on ignem & al' neces-
 sar p sustentac'one & manuten'one p'edict'
 S. & J. a p'edict' (tal die usq, &c.) qd
 ipd non assumpfit, (&c.) Et quoad
 resid' p'ed' temporis quo supponitur
 p'ed' W. recepisse p'ed' S. & J. in do-
 mid ipsius W. ac etiam invenisse & pro-
 bidisse cibū pot' lect' labac'on' ignem &
 al' necessar' p sustentac'on' & manuten-
 c'on' ipsarū S. & J. a p'ed' (tali die)
 usq, (&c.) in Part' p'ed' supius specifi-
 cat' idem W. dicit qd Acc'o non (&c.)
 quia die qd ante p'edict' diem (&c.) scit
 die (&c.) apud (&c.) p'ed' S. uxor ipsius
 W. sponte sua & sine aliqua rōnabili
 causa & absq, consensu & contra volun-
 tat' ipsius W. seipsam absentabit & a
 consortio & societate ipsius W. elongabit
 Qd' ipse idem W. superinde ipsam S. ad
 redeund' & cohabitand' cum eodm W.
 adtunc & ibm fidelit' requisivit & behe-
 menter sollicitabit p'edicta tamen S. ad
 redeund' & cohabitand' cum eodm W. re-
 muen' & denegan' idem W. superinde po-
 stea scit (tali die, &c.) apud L. p'ed'
 publice & pal' declarabit significabit &
 notic' fecit omnib' person' quibuscunq, qd
 ipse idem W. nulla modo solberet nec ali-
 qualit' satisfaceret vel satisfieri causa-
 ret aliquam summam vel summas Ma-
 net' aliquibus p'sone vel p'sonis qui fidem
 darent & crederent p'fat' L. p aliquibus
 mercimon' bonis vel pecuniarum sum-
 mis quibuscunq, de quibus quidem p'ze-
 missis p'ed' W. adtunc & ibm scit p'ze-
 dict' die (&c.) apud L. p'edict' noticiam
 fuit

Case:

Huit, Et hoc (&c.) Unde (&c. Vide Bro. Red. 95. aliter Id 96. — Defendant pleads Tender of 10 s. for Diet and Lodging, as being sufficient for the same, which the Plaintiff refused, *Bro. Vad.* 89. That he gave the Plaintiff's Wife Diet Part of the Time and was ready for the Remainder; but that the Plaintiff took his Wife from his House, p qd he could not perform, i *Repl Protestando non adduxit & plito non dedit uxoz' esculent'*, &c. Et Issue. Id. 112.

Et p'dict' Thomas Johnson p C. B. Attorn' suu veni & defendi vim & injuriam quando, &c. Et dic qd p'dict' Thomas Kemp actionem suam p'dict' inde s'us cum fere seu manutenere non debet, Quia dic qd post p'missionem & assumpcionem p'dict' scilicet septimo die Junii Anno regni dicti Dñi Regis nunc quarto apud London p'dict' in Paroch & Warda p'dict' quidam Adamus Long Thomas Kemp (modo quer') Nichus Salkeld Edus Bromley Will'us Lock & Ric'us Canner p quoddam scriptum suu factum apud London p'dict' in Paroch & Warda p'dict' sigillis suis sigillat' & p ipsum Thomam Johnson hic in Cur' plat' cujus dat' est eisdem die & anno recitando qd cum p'dict' Thomas Johnson tunc indubitac' fuisset p'fat' Adamo Thome Kempe (modo quer') Nicho Edus Will'o & Ric'o separatim in separabilibus denariis sumis quas p'ed' Thomas Johnson tunc satisfacere nequit ratione multoz dampnoz & impedimentoz
rum

A special Letter of Licence pleaded to an Action of the Case brought upon a Promise.

Case.

rum p ip'm C. J. ante tunc sistent' & multorū debitorū ipsi C. J. tunc debitorū & insolutorū que subito p ip'm C. J. recipi non potuer', Et ulterius recitando p scriptum illud p ipsum C. J. hic in Cur' ut pferatur plac' qđ pzed' C. J. significasset pzed' Adamo Thome Kempe (modo quer') Nicho Edzō Will'o & Ric'o desiderid' & voluntatem ad satisfaciend' & cum ipsis colloquend' ut eis magis distinte Condicionem suam ostenderet, Et quomodo & quando separalia debita pzed' ipsis pzed' Adamo Thome (modo quer') Nicho Edzō Will'o & Ric'o satisfacere posset, Et ideo aliqđ tempus licentia petiisset (in quo magis tuto & libe semetip'm pzetat' Adamo Thome (modo quer') Nicho Edzō Will'o & Nicho applicare & negotium suum pprium intendere posset ulterius testatu' est p scriptum qđ pzed' Adamus Thomas (modo quer') Nichus Edzus Willus & Ricus considerantes qđ dic' C. J. p restriccionem libertatis sue & amissionē vocat'ōis sue minus sufficiend' foret ip'is pzed' Adamo Thome (modo quer') Nicho Edzō Will'o & Ric'o satisfacere qđ fuit tempore sigillat'ōis scripti pzed' p ipsum C. J. hic in Cur' ut pzetatur plac' dedissent & concessissent & in & o scriptum pzed' (quantum in illis fuit) dederunt & concesserunt pzetat' C. J. plenam & libram libertat' veniam & licentiam tam ad eundi & redeundi ad & a pzed' Thoma (modo quer') ac pde'is Adamo Nicho Edzō Will'o & corū quolibet qđ eundi veni-

veniendi transeundi & redeundi in & cir-
 ca opus & negotia sua pred' aliquibus
 locis quibuscumq; infra Regnu' Anglie
 quotiescumq; p'dc'us C. J. occas'ionem
 huerit a die dat' script' pred' p ipm
 C. J. hic in Cur' plat' usq; vicesimu' no-
 nd' diem tunc instantis Junii inclusive
 libe pacifice & quiete sine aliquibus im-
 pedimento negatione restric'one vel mo-
 lestac'one pred' Thome (modo quer') Ada-
 mi Richi Edz' Willi & Ric'i vel eorum
 alicujus vel aliquar' aliar' persone sive
 personar' clamantium aut clamaturar'
 p ab vel subter predia' Thomam (modo
 quer') Adamu' Rich'um Edz' Willu' &
 Ric'u' vel eoz' aliquem quibuscumq; me-
 dio vel modo, Et pred' Thomas (modo
 quer') unacum p'dc'is Adamo Richo Edz'o
 Will'o Et Ric'o p scriptu' p'dicu' p pred'
 C. J. hic in Cur' ut p'fertur plat') Et pro
 quolibet eor' separatim & p separatim & re-
 spectivis Executoribus & Administrato-
 ribus eoz' & non un' eoz' pro altero eorum
 nec un' eozu' pro executoribus vel Admi-
 nistr' alterius eozu' convenerunt promise-
 runt Et concesser' ad & cum p'fat' C. J.
 Executoribus & Administratoribus suis
 qd' infra pred' tempus limitat' per scrip-
 tum pred' (per pred' C. J. in Cur' hic
 p'olat') concess' pred' C. J. Executors
 Administratores vel bona ejus non ar-
 restarentur attachiarentur imprisona-
 rentur sectarentur prosequerentur vel
 molestarentur per ipsos pred' Thomam
 (modo quer') Adamu' Richu' Edzu' Will-
 tu' Et Ric'u' vel eozu' aliquem ob vel
 propter

Case.

propter aliquod debitum vel aliqua debita tunc debet aut debet fore nec propter aliquam materiam vel rem tunc facta execut omisit vel rem tunc facta execut omisit vel promiss ante dat scripti predicti (per predictum C. J. ut prefertur hic in Cur' prolat', Et predictum C. H. (modo quer') Adamus Nichus Edzus Will'us Et Richus ulterius per scriptum predictum per eundem C. J. hic in Cur' prolat') convenerunt quod si eorum aliquis aut Executores Administratores vel Agentes eorum alicujus arrestarent attacharent imprisonarent sectarent prosequerentur vel molestarent predictum C. J. Executores Administratores vel bona ejus arrestari attachari imprisonari sectari prosequi vel molestari causarent per aliquam personam vel personas pro vel ex alicujus ipsum predictum Thome (modo quer') Adami Nichi Edz Willi Et Richi ante expirationem predicti dierum licencie per scriptum predictum (per predictum C. J. in Cur' hic prolat') concessum pro aliquo debito aut alia re ut prefertur tunc tal ipsum predictum C. (modo quer') Adami Nichi Edz Willi Et Richi per quem vel ejus parte talis violatio aut infractio foret de libertate et licentia per scriptum predictum (per predictum C. J. hic ut prefertur in Cur' prolat') concessum forissaceret et amitteret debitum vel debita ipsi vel ipsis tunc debet per prefat' C. J. Et quod scriptum predictum per predictum C. J. hic in Cur' prolat' estimaretur Et adjudicaretur summiens relaxatio et exoneratione prefat' C. J. pro talibus debito vel debitis que tunc alicui

alicui ip'orum p'dia' C. (modo quer')
 Adami Michi Edm Willi & Richi per
 ip'm C. J. debit' forent & insolut' pro-
 ut per scriptum p'dia' (per p'dia' C. J.
 hic in Cur' p'olat') plenius liquet & ap-
 paret, Et p'dia' C. J. ulterius dic' qd
 post confectationem scripti p'dia' (per p're-
 dia' C. J. hic in Cur' p'olat') & ante
 p'dia' vicesimu' nonu' diem Junii supe-
 rius menc'onat p'dia' C. R. (modo quer')
 (tal' die talis mensis) Anno Regni dicti.
 Dñi Regis nunc quarto supradicto exis-
 stend infra tempus libtat' & licentie supe-
 rius concess. apud paroch' (&c.) in Comd
 Midd' p'dia' p'dia' C. J. arrestari cau-
 savit virtute cujusdam p'cepti Dñi Re-
 gis e Cur' dicti Dñi Regis Palatii Re-
 gis Westm p'dia' emanand pro p'dia' de-
 bito trigint' librarum in Parr' p'dia' su-
 perius menc'onat' Iplumq' C. J. super-
 inde imprisonari & in p'isone p' spatium
 triu' dierum detineri causavit, Quod
 quidm debitum p'diarum triginti li-
 brarum p'dia' septimo die Junii Anno
 quarto supradcto p'fat C. R. per p'dia'
 C. J. debit' fuit & insolut' racione qua-
 rum quidm p'missorum & vertute scripti
 p'dia' per p'dia' C. R. ut p'fertur fac'
 & sigillat' & p p'dia' C. J. hic in Cur'
 p'olat' idem C. J. dic' qd p'dia' C. R.
 debitum suum p'dia' forisfecit & amisit
 Quq' ipse C. J. a debito p'dia' & ab om-
 ni parcell inde omnino relaxat' & exo-
 nerat' existit, Et hoc parat' est significare
 unde pet' judicium si p'dia' C. R. acco-
 nem

Case.

nem suam pdia' inde Usus eum here seu manutenerere debeat, &c.

Vide Hansf. 62. Vide Tho. 169. Bro. Met. 49.

*Def. plitat^s qd'
le Testator
computavit se-
cum in vita
sua & Def.
super illo in-
vent' existen'
in 12 l. ipse
postea solvit
10 l. & l' au-
ter 40 s. obtu-
lit solvere Ex-
ecutrici.*

Et pdia' R. p. M. B. Altozū suū
vendit & defendit vim & injur' quan-
do, Et idem Def. die qd' Quer' (Accō
non) quia die quod post tempus sepa-
ralium pmissionū & assumptōn p eundem
Def. pstat' testatozi in vita sua in Par-
racōne pdia' superius fieri supposit' (scit
tali die anno & loco) pstat' testatoz in vi-
ta sua & idem Def. insimul computa-
bant de omnibus denariozum summis
p eundem Def. pstat' testatozi tam p pre-
dictis quatuor vaccis in Parracōne pō
mencōnat' qm p omnibus aliis averiis
p pstat' testae eidē R. ante tempus illud
vendit' & delibat' & tunc debie & insoluit
Et super Compō illo idem Def. invenit
fuisse in arrearagiis erga pstat' testato-
rem in vita sua in duodecim libris
legitis monete Anglie qdōq; idem Def. po-
stea scit' (tū die anno & loco) solvit pstat'
testatozi in vita sua decem libz' de pdia'
12 l. sic super Compō illo pstat' testatozi
in vita sua debie Et idem Def. ulterius
die qd' ipd' idem Def. post mortem pstat'
testatozis & ante diem impetraconis
hiz Originalis ipsorū quer' scit' (tū die
anno & loco) obtulit ad solvendū pdia'
Executrici dum ipd' sola fuit quadra-
ginta solidos de pdia' 12 l. restū quos
quidm 40 s. pda Executrix de eodm
Def. recipere penitus recusabat quodq;
iple

Case.

ipse idem Def. semper post p̄dictū (talem diem) hucusq; parat' fuit & adhuc parat' existit ad solvend' p̄dicta' Executrici dum ipsa sola fuit ac p̄fat' quer' post dispon-
 salia inter eos celebrat' eisdem 40 s. ac quadraginta solid' ill' idem Def. parat' ad solvend' p̄dicta' quer' hic in Cur' pro-
 fert Et hoc parat' est verificare Unde pe-
 tit iudicium si p̄dicta' quer' actionem suam p̄dicta' inde versus eum here debeant, &c.
 Cum hoc quod idem Def. verificare vult quod p̄fat' testator in vita sua post p̄dictū Comp̄d' int' p̄fat' testatorem & eundem Def. sic ut p̄fertur hic non vendebat neq; delibabat eidem Def. aliquam vaccam vel alia averia quaecunque.

Averment
 quod Testator
 null' al' ave-
 ria eidem Def.
 post computum
 vendebat.

Et p̄dicta' quer' dicunt quod ip̄d p̄ ali-
 qua p̄allegat' ab actione sua p̄dicta hēdū
 p̄cludi non debent quia p̄stendo quod
 p̄dicta' def. non solvit p̄fat' testatori p̄dicta'
 decem libras in p̄lato p̄dicta' def. supe-
 rius specificat' p̄stendo etiam qđ p̄dicta'
 def. post mortem p̄dicta' testatoris non ob-
 tulit ad solvend' p̄dicta' Ecce dum ip̄a so-
 la fuit p̄dicta' 40 s. put p̄dicta' defend' supe-
 rius p̄litando allegabit p̄ p̄lito iidem
 quer' ut p̄ius dicunt quod p̄dicta' def. as-
 sumpsit super se modo & forma prout p̄dicta'
 quer' superius versus eum queruntur
 Absq; hoc quod p̄dicta' Testator in vita
 sua & p̄dicta' def. insimul computabant
 modo & forma put p̄dicta' def. superius al-
 legavit Et hoc parat' sunt verificare un-
 de petunt iudicium & dampna sua occone
 p̄missi sibi adjudicari, &c.

Repl.
 Quod Def. non
 solvit neque
 obtulit ut su-
 pra placitando
 allegavit.

Pro placito
assumpsit.

Traverse.
Del Account.

Z

Et

Case.

Rejoinder.

*Quod Testator
cum illo com-
putabat. Et
exit' sur ceo.*

Et p^{re}dict' def. ut prius dic' q^{uo}d p^{re}dicta' Testator in vita sua & p^{re}dicta' def. insimul computabant modo & forma p^{re}dict' idem def. superius allegabit videlicet apud B. p^{re}dicta' Et de hoc pon' se super p^{re}dictam' Et p^{re}dicta' quer' silit' Iⁿo p^{re}ceptum est Dic' q^{uo}d Venire fac' hic, (Ec.

Defendant pleads, That the Testator gave him Orders to sell the Cloth, which he did accordingly, and paid the Money to the Testator. *Bro. Vad. 88.*

That Defendant and Intestate did account, and thereupon it appear'd he did not owe one Penny to the Intestate, *Nepe non computaver' & Issue. Id. 202.*

Def. p^{re}stando non assumpsit p^{ro} p^{re}sito That he paid 10 l 9 s. to the Intestate in his Life-time in full Satisfaction, *Nepe non solvit & Issue. Id. 116.*

That he accounted with the Executrix's Husband, and paid him 40 s. the Arrears; *Nepe p^{re}stando non computabit p^{ro} p^{re}sito non solvit. Idem 100.*

Al' Narr'
*Quod Def. in
cons. sursum
reddic' termini
Shope quer' in
Shopa sua.*

Bar.

*Qd' Def. ob-
tulit imponere
quer' in Shopa
sua qd' recu-
savit.*

ff. **A**ctio non, Quia dic' q^{uo}d idem A. Ad p^{re}dictum festu Natalis D^{omi}ni in Narratione p^{re}dict' specificat' videlicet (tal die & anno) apud H. p^{re}dict' paratus fuit & obtulit p^{re}fat' D. ad imponend' p^{re}dicta' B. in quietam & pacificam possessionem p^{re}dict' Shope in H. p^{re}dict' quam idem A. in forma p^{re}dict' in Narratione p^{re}dict' allegat' fuit & occupavit ac q^{uo}d p^{re}dict' D. fuisse & occupasse potuisset eandem Shopam p^{re}dict' & durante p^{re}dict' Terminis quinq; annor^{um} post p^{re}dicta' festum Natalis D^{omi}ni tunc p^{re}dict'

Case.

pr' sequen' absque aliqua disturbance
quacunque scdm promission' & assumptio-
nis ipsius A. pred' Et ulterius idem A.
dic qd eisdem (tibus die & anno) apud
H. pred' predia' D. recusabit imponi in-
quietam & pacificam possessionem Shope
illius per eundem A. Et hoc parat' est
verificare Unde pet' judicium si pred' D.
actionem suam pred' inde versus cum
habere seu manutenere debeat, &c.

*Some Cases and Notes as to Special Pleadings on
Assumpfits.*

IN Consideration of forbearing a Suit upon
a Trespass, the Defendant promised Re-
compence the 1st of May; and that after he
requested him, and the Defendant refused.
The Defendant pleads the Statute of *Limita-
tions*; but the Narr' adjudged good, and that
there was no Cause of Action till the Request
made of the Recompence. 1 Cro. 99.

Recom-
pence and
Request.

Deceit upon a Promise to deliver 400
Pounds of Wax for Moneys paid, &c. and
that he delivered only 300 Pounds, and 73
Pounds of bad Wax, warranting it to be
good, &c. The Defendant pleads an Accord
made after for 20 Pounds of Wax, as well for
the Insufficiency, as for the Residue, and that
the Plaintiff accepted it. Upon Demurrer
the Bar was held good, and that a Concord
executed is a good Plea in all Actions, where
nothing but Damages are to be recovered:
And that Arbitrament is a good Plea before
it be executed; for Debt will lie upon Arbi-
trament. Dyer 75. *Andrew's Case. Vide 355.*

Deceit and
Accord.

Case.
Deceit.

An Action was brought in Nature of a *Deceit*, for that the Defendant had sold to the Plaintiff certain Sheep, and had warranted them to be sound, when indeed they were rotten. The Defendant pleads, they were sound at the Time of the Sale; *Et de hoc*, (*&c.*) *Absoq* *hoc*, That they were rotten. The Plaintiff demurs, and adjudged for him; because the Defendant had taken Traverse to the Cause of Action, and an Issue cannot be taken upon Two Affirmatives. *Noy's Rep.* 124. *Relv.* 114. *Redhead and Harper. Vide postea.*

Traverse.

Quiet En-
joyment.

Parr' upon Promise, That the Plaintiff should quietly enjoy Lands, and to save him Harmless, *&c.* and shews he was ousted, and a Judgment against him in Ejectment. The Defendant pleads the Statute of Limitations. Held that the Action well lies, tho' Execution was not taken out, and that Damages should be entire, tho' the Breach be but in Part. 1 *Cro.* 254, 255. *Peck and Ambler.*

Defendant
discharged
of Promise.

In an Action upon Promise, to go such a Voyage. The Defendant pleaded, That before any Breach the Plaintiff such a Day, at such a Place, *Exon* *rabit* *rum* of the Promise. The Plaintiff demurs, and adjudged this was a good Discharge without shewing how. 1 *Cro.* 279. *Langden and Stokes.*

Upon Pro-
mise to deli-
ver a Grey-
hound.

Upon a Promise to deliver the Plaintiff his Greyhound, which the Defendant had found. The Defendant demurr'd, pretending it was *feræ naturæ*, and that the Plaintiff had no Property in it, and that a Mastiff, a Hound (which comprehends a Greyhound), a Spaniel and a Tumbrel, are Dogs valuable, wherein
a Man

Dogs of Va-
lue.

a Man may have Property, and about which Actions are given; and that there needs no Averment that the Dog was tame, for that it shall be intended. 1 Cro. 125, 126. Owen's Rep. 93. Ireland and Higgins.

In Consideration the Plaintiff promised to deliver up the Defendant his Bill for a Debt, the Defendant promised to find Sureties to be bound for it, and that he produced Two Sureties of no Value. Defendant pleads the Plaintiff had not delivered him the said Bill. Plaintiff demurs, and adjudged for the Plaintiff; for a Promise against a Promise is a sufficient Ground of an Action, and he need not to shew that he had done it, and the finding of bad Sureties is the same as if he had found none. 1 Cro. 543. Grower and Capper.

Upon Promise to find Sureties.

Upon a Promise to pay *quantum valent*, for Necessaries for a Suit of Clothes, &c. Defendant pleads Nonage at the Time, Absq; hoc, &c. Plaintiff demurs, and Judgment for him; and that it must be shewn on the Infant's Part, that the Apparel was such as was not necessary for him. Bendl. 186. Delaval and Cleere.

Upon quantum valent for Necessaries.

Upon an *Indebitat'* Assumpsit for making Apparel. Defendant pleads, That he became bound in a Bond of 60*l.* in Satisfaction, and that the Plaintiff accepted it. Repl' non accepit. Defendant demurs, for that the Plaintiff had tender'd an Issue upon the Non-acceptance of the Bond, whereas it should have been, that the Defendant *Non debuit tentus*. But 'twas answer'd that *Non accepit* was sufficient, and that tho' the Replication be not good, yet the Plea is all naught.

That he gave 60*l.* in Satisfaction.

Case.

naught, and therefore no Judgment can be for the Defendant. *Stile's Rep.* 309. *Kymlock* and *Bamfield*.

That the Plaintiff gave Day, and arrested the Defendant before.

An Executor, in Consideration that the Plaintiff would give him Day till *Michaelmas* for the Payment of the Testator's Debt, assumed to pay it. Plaintiff shews *in facto* he gave a Day till *Michaelmas*. The Defendant pleads, That after the Promise and before *Michaelmas*, the Plaintiff arrested him for the same Debt. The Plaintiff demurs: *Gawdy* said, if he did not receive Money before *Michaelmas*, the Consideration is performed. *Fenner*, To what Purpose then was Day of Payment given? *Popham*, He did not promise to forbear to sue him, and the Payment is forborn if the Money be not receiv'd. *Latch. Rep.* 151. *Thornton* versus *Kemp*.

Defendant pleads, he had acknowledged the Statute for the Money.

That the Defendant 19 *Maii* 29, &c. promised upon Forbearance of a Debt to pay it. Defendant pleads, That he was indebted 29 *Maii* 29. and afterwards acknowledged a Statute for the same Debt, upon which the Plaintiff had levied the Money; *Absoq hoc*, that he was indebted *antra vel post vel aliquo modo*. The Court held, the Cause of the Action is the Assumption, and where the Consideration is not traversable; always the Ground of the Action is traversable, and the *Assumpsit* is the Ground, and not the Debt. *Judic' p Quer'*. *Leon.* 252, 253. *Smith* and *Hitchcock*.

Defendant pleads a Release from Husband of a Promise to Wife, to pay her Money after his Death.

Belcher and his Wife against *Hudson*, for a Promise to the Wife in her Widowhood, That if she married *Thomas Mason*, the Defendant would pay her 40 s. per Annum durante vita

vita after *Mason's* Death; avers she married *Mason*, and after his Death married the Plaintiff, &c. The Defendant pleads a Release from *T. Mason*, of all Actions and Demands which he had, &c. The Plaintiffs demur, and adjudged no Plea; for the Money was not in Demand during *Mason's* Life, nor could ever be demanded by him. 2 Cro. 222.

Case.

Upon an *Indebitatus assumpsit* for 5 l. The Defendant pleads, That he being indebted 5 l. and *W. S.* in another 5 l. they gave the Plaintiff Bond of 20 l. for Payment in Satisfaction; that the Bond was sealed before *Assumpsit* supposed and made for the said Debt. The Court held, this was no good Plea. *Leon.* 154. *Fennings* and *Winch*.

That he and a Stranger join'd their Debts, and gave Bond.

Against a Carrier, upon his Promise to carry Goods safe, and suffer'd them to be spoil'd: The Defendant pleads, Not Guilty.

Carrier pleads *Non Culp.*

Judicium pro Quer', Issue (was held erroneous; for it ought to have been *Non assumpsit*, for the Plaintiff relied upon that chiefly. *Noy* 114. *Bradly* versus *Benny*.

Vide postea.

The Consideration was, (the Plaintiffs having a Grant from the Defendant to cut down 1000 Trees in a Wood, and had cut some of them) That if the Plaintiffs would forbear, they should after three Years have Licence to cut and make up the 1000. Plaintiffs aver, That at that Time they had cut but 800 & non amplius; and that after three Years the Defendant hinder'd them to cut the Residue. Defendant pleads, That before the Promise

Upon Promise to cut down 1000 Trees.

Averment.

Case.

made, the Plaintiffs had cut 1000 Trees, ~~Abſq̃ hoc~~, That at that Time they had cut but 800 only. Plaintiffs demur, *Judic* for Defendant, for every Matter in Deed alledged by the Plaintiffs may be traversed by the Defendant. And the Defendant may by Way of Traverse answer the Matter alledged in the same Words as the Plaintiffs have alledged them; and therefore the Plaintiffs by their Demurrer upon the Bar have confessed the Cutting of 1000 Trees, which was their full Bargain at first, and by Consequence there is no Consideration whereon to ground their Promise. *Yelv. 195. Tatem & Poulter.*

Traverse upon Averment.

Infant promises to pay for Cure.

Upon a Promise to pay for a Cure, the Defendant pleads Nonage, *& pet' Judic* *accord*. It was held the Action will lie, for this Thing is as necessary for him as Meat, Drink and Apparel, therefore his Promise is as binding for this as the other, tho' under Age. The Court left the Plaintiff to demur to the Plea, and then 'twas agreed by the Parties. *1 Bulst. 39. Dale & Copping.*

Def. pleads his Wife was dead before his Promise made.

A. the Widow and Executrix of *B.* marries *C.* and dies, the Goods come to *C.*'s Hands, who promises to *D.* Son and Legatee of *A.* That if he would forbear a certain Time, he would pay *D.* the 7 *l.* That the Plaintiff did forbear, and *C.* did not pay, *&c.* *C.* pleads his Wife was dead before he made this Promise, and therefore he ought not to be charged. *D.* the Plaintiff demurs, the Chief Justice said, the next of Kin to the Wife may have Letters of Administration, and so take the Goods out of the Husband's Hands, and this Promise being after Death, not good, If the Husband be sued for

for theſe Goods in the Eccleſiaſtical Court, he hath a good Plea in Bar, that he is ready to deliver them unto the Adminiſtrator. The whole Court agreed againſt the Plaintiff, Judgment *Quod quer' nil capiat p Billam. Owen 133. 1 Bulſt. 44. 2 Cro. 257. Smith verſus Jones.*

Caſe.

The Plaintiff declares, That he and the Defendant accounted, and that thereupon the Defendant was in Arrear to him 6*l.* which he promiſed to pay at a Day then paſt. The Defendant confeſſeth the Account, and Arrear of 6*l.* and for the Payment of which he enter'd into Bond to the Plaintiff *abſq hoc*, that there was any other Account between them ſince that Time. Plaintiff demurs, for that the Account is not traversable, but the *Assumpſit* in this Caſe. *Relv.* Juſtice ſaid, the Defendant doth not traverse the Conſideration, but by his Plea he confeſſeth the Action with full Satisfaction made of the ſame demanded; and that he could not have taken a better Traverse; the Court agreed in Judgment, *Quod quer' nil capiat per breve. 1 Bul. 16. Tolbye verſus Cooke.*

Account and in Arrear.

Def. ſays, he gave Bond for the Payment.

The Defendant in Conſideration the Plaintiff would pay him 100*l.* promiſed to enſeoff him of certain Lands upon Requeſt. That he paid and requeſted, and Defendant reſuſed. Defendant pleads, That before the Action brought, he did enſeoff the Plaintiff, who accepted thereof in Satisfaction and Diſcharge of all. The Court agreed, That the Acceptance went in Diſcharge of all. And Judgment *Quod quer' nil capiat per Billam. 1 Bul. 38. Wolverton verſus Davis.*

That he had enſeoffed, and Plaintiff had accepted before the Action brought.

Dorothy

Case.
Def. pleads
Plaintiff a-
greed to dis-
charge him
for a lesser
Sum, & *sem-
per paratus.*

Dorothy Richards, Executrix of *A.* her Husband, declares, That *B.* in Consideration of two Weights of Corn delivered to him by the Testator, promised to pay the Plaintiff 10*l.* Defendant pleads, That after the *Assumpsit*, the Plaintiff in Consideration that the said two Weights were drowned by Tempest, and in Consideration, that the Defendant would pay the Plaintiff for every 20*s.* of the said 10*l.* 3*s.* 4*d.* scit in tot' 33*s.* 4*d.* did discharge the Defendant of the Promise, and averred further, that he had been always ready to pay the said Sum newly agreed; Plaintiff demurs, & *Judic' pro Quer'.* *Leon. 19.*

Upon Daugh-
ter's Promise
to pay her-
Father back
20*l.* of her
Marriage
Portion.

Collins versus Willis, The Father makes a Promise to *Willis*, That if he should marry his Daughter to pay him 80*l.* for her Portion, but *Willis* demanded 100*l.* or else did refuse to marry her. Whereupon the Daughter prayed her Father to pay the 100*l.* and in Consideration thereof she did assure him to pay him 20*l.* back again. The 100*l.* was paid, and the Marriage took Effect, and the Father brought his Action upon the Case against the Husband and the Wife for the 20*l.* *Gawdy* and *Fenner* said the Action would lie, but *Popham* held the Consideration void. *Owen 63.*

Plaintiff,
Horse lent
out by
Hofler.

The Plaintiff shews that he lent his Horse with the Defendant being an Inn-keeper, to be safely kept at such a Rate, and the Defendant lent him out to hire to divers Persons, whereby he was made lame, and the Plaintiff lost his Business, and was damnified, &c. Upon Not Guilty, Verdict, was found for the Plaintiff; and it was moved, That since the
Jury

Jury found 20 Marks Damages, that the Defendant might detain the Horse. The Court said in this Case, the Damages are not given for the Horse, but for the Misuse and Loss of Business. But in Trover it is in Recompence of the Horse, and the Plaintiff had Judgment. *Bendl. 171.*

Case.
20 Marks
Damage.
Moved to de-
tain the
Horse.

Deceit.

As to Deceits arising by Contracts, Bargains and Sales.

IT is to be observed, That if one sell me Cattle or Goods that are none of his own, and they be taken from me, or I am molested by the right Owner, I may have an Action on the Case against the Seller, especially if he made Warranty, or knew them to be another Man's.

So if one sells me a Horse, and warrant him sound Wind and Limb, and he have a secret Disease, but not if the Disease or Fault be apparent; or the Warranty made after the Contract or Thing sold, or extends to a Thing to come, unless it be by Deed or Covenant:

Yet it will lie where one sells me corrupt Victuals. See *Finch* 188. 5 H. 7. 41. F. N. B. 98. 13 H. 4. 2. 7 H. 4. 14. 20 H. 6. 37, &c.

Sale of deceitful Things. F. N. B. 98. 20 H. 6. 34. 2 H. 7. 12.

For selling that which is none of his own. 1 Cro. 44. 2 Cro. 1, 4, 193, 196, 197, 474. Aff. pl. 8. 5 H. 7. 41. 4 Co. 18. 8 Co. 42.

For

Case.

For warranting a Horse sound. *Noy's Rep.* 124. *Yelv.* 114. *Sed vide Stiles* 310. 2 *Cro.* 631. 3 *Bul.* 94.

Sale of deceitful Wares, or by deceitful Measures. *Dyer* 75. 2 *Cro.* 196. 19 *H.* 6. 53. 20 *H.* 6. 34. 11 *Ed.* 4. 6. 42 *Aff.* pl. 8, &c.

Sale of corrupt Victuals. *Kelw.* 91. 8. 18 *Ed.* 4. 6. *Sed vide Dyer* 75, 76.

By a Tradesman in his Trade. 2 *Cro.* 4, 469, 471. *Bridgman* 126, 127.

Bar in Trover.

Per Custome
de London' a
emer & ven-
der biens inter
ortum & oc-
casum solis in
le Shop de
Chescun Free-
man, Et que
un W. B. e-
steant possesse
del biens in le
Count, tiel jour
vendeur a luy
esteant un
Freeman de
London in Son
Shop la.

ff. **E**t p̄dict' C. p̄ J. S. Attoꝝ suum
ven' & defend' vim & injur' quan-
do, &c. Et die q̄ p̄dict' Robtus accōnem
suam p̄dictam versus eum here non de-
bet quia dicit q̄ Civitas London' est
antiqua Civitas infra quam quidem
Civitat' h̄etur & a tempore cujus con-
trarii memoria hominum non existit
hebatur cō Mercatorum tam p̄ Civibus
ejusdem Civitatis qm' p̄ omnibus aliis
p̄sonis quibuscunq; ad emend' & vendend'
omnes & singulas res & merchandizas in
omnibus locis publicis & apertis infra
eandem Civitatem Suburbia & Liber-
tat' ejusdem quot' die in Septimana
(die Dñico & diebus festivalibus voc-
cat' (Holy-Days) tantummodo except') ab
ortu solis usq; ad occasum solis dummo-
do una pars contrahentiū sit liber ho-
mo vel liba mulier ejusdem Civitat'
Et idem Thom' ultius die q̄ ante p̄dm
tempus quo supponitur Bona & Catal-
la p̄dicta ad manus & possession' ipsius
Thom'

Thom̄ debuisse scilicet primo die Septembris Anno Regni Dñi Regis nunc Septimo apud London̄ predictam videlicet in Paroch Sed Sepulchri in Warda de Farrindou extra quidam W. B. fuit possessionat' de Bonis & Catallis pred' Et sic inde possessionat' existens idem W. eodem primo die Septembris Anno Septimo supradicto post ortum solis & ante occasum ejusdem diei apud London' videlicet in quadam thopa ipsius Thom̄ scitua' in Paroch & Warda pdicta' (existens loco publico & aperto) Bona & Catalla pdicta' eidem Thom̄ adtunc libro homine Civitat' pred' existens pro certa pecunie summa inter eos concordat' publice & aperte vendidit & deliberabit p quod idem Thom' fuit de eisdem Bonis & Catallis possessionat' Et sic inde possessionat' existens pdicta tempore quo, &c. Bona & Catalla pdicta ad usum & proficuum suū ppiū adtunc & ibi cepit disposuit & convertit put ei bene licuit Que quidm capto ratione venditionis pdictę & Conversio & Dispositio Bonorum & Catallorum pdictorum sunt eedem inventio & conversio unde predictus Robtus superius se modo queritur Cum hoc qđ idem Thom̄ verificare vult qđ predictus primus dies Septembris Anno Regni dicti Dñi Regis nunc Septimo non fuit dies Dñicus nec dies Festivallis ac qđ idem Thom̄ tempore barganizationis & venditionis pdictarum in forma pdicta factarum fuit & adhuc est liber homo pred' Civitat' London' Et hoc

Averment.

Case.

hoc idem Thom parat' est verificare unde petit iudiciu si pzed' Robtus acco-
nem suam pdictam versus eum here de-
beat, &c.

Repl.

*Que def. trouve
les biens come
en le Count,
& puis deliver
eux al dit*

*W. B. qui per
covin & fraud
perenter luy &
def.) al intent
a defrauder le
pl't) vend' eux
al defendant.*

Et pdictus Robtus dic' qd ipse p ali-
qua pallegat' ab actione sua pdicta' hend'
pcludi non debet quia dic' qd ipse fuit
possessionat' de Bonis & Catallis pre-
dictis ut de Bonis & Catallis suis pro-
priis & sic inde possessionat' existen' ea-
dem Bona & Catalla extra manus &
possession' suas casualit' amisit q' quidam'
Bona & Catalla postea scilicet pdicta
decimo die Septembris anno septima
supradicta apud London' in Paroch &
Warda pdictis ad manus & possession'
ipsius Thome p inventionem debener' per
quod idem Thomas fuit de bonis & ca-
tallis illis possessionat' ipsaq' Thoma sic
inde possessionat' existen' & sciens bona
& catalla pdicta' fore bona & catalla ipsius
Roberti pp' ac intendens ad defrau-
dand' ipm Robtum de bonis & catallis
pzed' bona & catalla illa delibabit p'fat'
W. B. p quod idem W. fuit de bonis
& catallis pzed' possessionat' Ipsaq' W.
sic inde possessionat' existen' & pzed' W.
sciens bona & catalla pzedicta' fore bona
& catalla ipsius Robti pp' pzed' decimo
die Septembris anno septimo supradicta
apud London' in Parochia & Warda
pzed' vendidit pzed' bona & catalla p'fat'
Thome p covinam & fraudem adtunc &
ibm hie' inter pzed' W. & Thomam ea
intentione ad defraudand' ipm Robtum
de bonis & catallis pzed' que quidam'
ben'

Case.

venditio bonoz & catalloz predicta est eadem venditio in barra predicta superius specificat. Et hoc parat est verificare unde ex quo predicta Thomas conversionem bonoz & catalloz predicta superius cognovit idem Robertus petit iudicium & dampna sua occasione premissa sibi adjudicari, &c.

Et predicta Thomas ut prius die quod predicta W. B. fuit possessionat de bonis & catallis predicta Et sic inde possessionat existens idem W. B. eodem primo die Septembris anno septimo supradicto post ortum solis & ante occasum solis ejusdem diei apud Londoniam predicta videlicet in parochia & Warda predicta (existens loco publico & apto) bona & catalla predicta eidem Thome adtunc libo hominum Civitatis predicta existens pro certa pecunie summa inter eos concordat publice & apte vendidit & deliberavit per quod idem Thomas predicta tempore quo, &c. bona & catalla predicta ad usum suum proprium disposuit & convertit Absque hoc quod predicta W. B. vendidit eadem bona & catalla eidem Thome per cobinam & fraudem inter predicta W. & Thomam ea intentione ad defraudandum ipsum Robertum de bonis & catallis predicta put predicta Robertus superius allegavit Et hoc parat est verificare unde petit iudicium & quod predicta Robertus ab actione sua predicta versus eum habere precludatur, &c.

Rejoinder.

Per maintenance del' bar
& traverse se
del Covin, &c.

Le Travers

Et predicta Robertus ut prius die quod predicta W. B. vendidit predicta bona & catalla predicta Thome per cobinam & fraudem

Surrejoinder.

Et Issue sur le
Covin.

Case.

dem int' p'dict' W. & Thomam ea intentione ad defraudand' ipm Robertum de bonis & catallis p'dict' put ipse superius allegavit Et hoc petit qd inquiratur p Patriam Et p'd' Thomas attit' Jo p'cept' est Dic' qd venire fac' hic, &c. *Vide Winch. Ent. 109.* Defendant justifies taking the Cattle as forfeited to the Mayor, &c. of London, as being sold in *Smithfield* before Nine a Clock. *Tho. 380.*

*Placitum at
Trover quod
def. emisset bona
in aperto
mercato in
Westm.*

Et p'dict' C. p — Attornd suu ven' & defend' vim & injur' quando, &c. Et dicit qd p'd' C. actionem suam p'd' inde versus eum here seu manutenere non debet Quia dicit quod infra Parochiam Sced Margarete Westm' in p'dicto Com' Midd' est & a tempore cujus contrarii memoria hominu non existit fuit quoddam Mercatum tent' sup quemlibet diem Sabti septimanatim & singlis septimanis a toto tempore supradcto p empcon & vendicon omnium & omnimod bonoz & catalloz mercimon' & merchandizaz qd diu ante p'd' tempus quo supponitur convention' bonozum & catallozum p'd' fieri quidam J. R. possedonat' fuisset de bonis & catallis p'd' in narratione ipsius C. superius mentionat' qd p'd' J. R. postea & ante p'dict' tempus quo, &c. (scilicet sup diem Sabti decimo sexto die Junii Anno Regni decd Dni Regis nunc, &c.) supradicto apud mercatum p'd' infra Paroch Sced Margarete Westm' in Com' Midd' in aperto mercato videlicet inter horam decimam ante

ante meridiem & horam secundam post meridiem ejusdem diei vendidit pdia bona & catalla pdia C. per qd idem C. postea scit pdco tempore quo, &c. pdia bona & catalla ad usum ipsius C. proprii convertit & disposuit put ei bene licuit Et hoc parat' est verificare Unde petit Judicium si pdia C. acco'nem suam pdia inde versus eum here seu manutenere debeat.

Replies qd non vendidit modo & forma, &c. Vide Rob. Ent 24, 449, 450. Sise in London. Thomp. 62. i Bro. 158, 357. in apto Mercato. 2 Mo. Intr. 151.

Quando, &c. Acco non Quia ptestando qd pdia annulus non fuit tanti valoris put pdia S. p Breve & Barr sua pdia superius suppon ptestando etiam qd annulus pdictus non devenit ad manus & possessionem ipsius R. p invenconem put pdia S. p Breve & Barr sua pdia superius suppon p plito dicit qd quidam T. P. fuit possessorial' de annulo pdco ut de annulo suo proprii Et sic inde de possessorial' existend idem T. P. postea scit die & anno, (&c.) apud London in Paroch Bte Marie de Accubus in Warda de Cheape pced' pro certa pecunie summa vendidit annulo pdictum eidem R. virtute cujus vendiconis idem R. fuit possessorial' de annulo pdco ut de annulo suo proprio Et sic inde possessorial' existend idem R. postea scit die & anno supradictis apud L. pced' in Parochia & Warda pced' pro certa pecunie summa

A a

Justification in Trover, de annulo per loy al emption de ceo, & overtment vendition de ceo arrere. Et traverse science del' property destre en le Plaintiff.

Case.

summa vendidit annulū pdictum cuidam C. f. Civi & Murisabz' London in apco mercato ibm virtute cuius vendicōnis idem C. f. fuit possessionat de annulo pdeo ut de annulo suo proprio Absq; hoc qđ idem R. ante pdict' tempus vendicōnis annuli pdei pstat C. f. fact' scribit annulum ille fore annulum pđ S. pꝛout idem S. p Bꝛ & Mare sua pdea superius suppon Et hoc, (Ec.) Unde, (Ec.) Vide Rob. Ent. 30.

*Pro Equa Bar
quod def. cepit
Equam ut ex-
trahur' & fe-
cit proclam'
inde & posuit
eam ad depas-
turand' &
quia quer' no-
luit solvere def.
pro pastura de-
detinebat
Equam quo-
usq; evasit.*

A Econ non, Ec. Quia dic qđ bene & verum est qđ pꝛed C. fuit possessionat de Equa pꝛed ut de Equa sua propꝛ' sed idem def. ulterius dic qđ ipse idem def. ante pꝛed tempus quo supponitur Equam pꝛedam ad manus & possessionem ipsius def. devenisse Ac eodem tempore quo, Ec. fuit & adhuc existit scilicet de & in Manerio de D. cum pꝛin in H. pdict' in Dñico suo ut de feodo Absq; idem def. & omnes ille quozd statū idem def. modo het in Manerio pdeo cum pꝛtin a tempore cuius contrat memoria hominū non existit huc & huc consuever' om' oꝛ extrahuras veniend infra Manerium pdict' Et easdem extrahur' pꝛetot tempus pꝛed scilicet & scilicet consuever' Et idem def. ulterius dic quod Equa pdict' ante pdict' tempus quo supponitur Equam ille ad manus & possessionem ipsius def. per inbencōm devenisse scilicet die, (Ec.) fuit extrahur' veniend infra Manerium pꝛed p qđ idem def. eodem die Equam pꝛed' apud D. pdict' in-

infra p̄cinct' Manerii p̄ced' inuent' ut
 extrahuram seiscibit & eam adhuc & ibi
 impcabit in quodam cōi & ap̄to Parco
 infra Maneriu p̄dictu p̄ spatiu triu
 dieru Et postea scit̄ (tal' die, &c.) E-
 quam p̄ced' extra Parcū p̄ced' cepit &
 eam posuit ad pasturand' infra p̄cinct'
 Manerii p̄ced' p̄ spatiu quinque dierum
 extunc p̄ced' sequend' Et idem def. ulterius
 die qd̄ ip̄s (tal' die, &c.) scdm̄ cons' Reg-
 ni Anglie usitat' unam p̄clamacōnem in-
 de fecit in Villa Mercatoria de D. in
 Manerio p̄ced' adiacend' die Mercurii (qui
 quidm̄ dies Mercurii est & tunc fuit
 dies Mercatorius in p̄ced' Villa de D.)
 qd' Equa p̄ced' fuit extrahura & seie p̄
 extrahura p̄ p̄ced' def. infra p̄cinctu' Ma-
 nerii de D. p̄ced' p̄cedcō die, (&c.) p̄cedcōq̄
 Equa in forma p̄ced' scdm̄ cons' hactenus
 in Regno Angl' usitat' sic p̄clamd' existend'
 & ante aliquem al' diem Mercator' in
 aliqua alia Villa p̄ced' adiacend' Manerio
 p̄ced' tent' scit̄ die, (&c.) apud D. p̄ced'
 p̄dictus C. ven̄ ad ipsum Def. p̄p̄ietate-
 tem Equē ill' petendo & calumpniando
 Idemq̄ def. eodm̄ die, (&c.) apud D.
 p̄ced' parat' fuit ad deliberand' p̄ced' C.
 Equam p̄ced' si idem C. solveret & red-
 deret eidm̄ def. rōnabil' onera p̄ seiscura
 impcacōne & p̄clamacōne Equē ill' & p̄
 pastur' ill' p̄ tempore quo eadem Equa in
 custod' ipsius def. remansit quod facere
 p̄ced' C. penitus recusabit sup̄ quo idem
 def. Equam p̄dictam in custodia sua de-
 tinuit p̄cedcōq̄ Equa sic in custod' ipsius
 def. existend' Equa illa postea scit̄ die,
 A a 2 (Et.)

Case.

(*Ec.*) extra custod ipsius def. ebasit & extraherebat ad loca eidem def. incognita que sunt cedem invenco & converco Equae p^odia' Unde, (*Ec.*) Et hoc, (*Ec.*) Unde, (*Ec.*)

*Qd' quer' obtulit solvere
13 s. 4 d. pro
emendis &
def. recusavit
ill' accipere.*

Precludi non, Quia p^otestando qd p^o def. non fuit seil de Manerio p^odcō cū p^otrū in Dūico suo ut de feodo put p^odia' def. supius allegabit p^otestandoq etiam qd idem def. & omnes, (*Ec.*) a toto tempore p^odcō non huer' nec here consuever' omniōd extrahur, (*Ec.*) put p^odia' def. supius suppon p^otestando etiam qd Equa p^oed' non fuit extrahura venien infra Maniū p^odia' nec qd p^o def. Equam p^odia' apud D. invent' ut extrahur seilabit nec eam adtunc & ibm imprecabit in p^odcō cod Parco in Maniō p^odia' per spatium triu' dieru' nec Equam p^odia' posuit ad pasturand, (*Ec.*) p^or' sequen p^otestandoq etiam qd p^odia' def. scdm cons Regni deo D^oū Regis Angl usitat non fecit pelam in Villa Mercat de D. p^oed' nec qd p^o dies Mercen est nec tunc fuit dies Mercator' in p^o Villa de D. nec Equa p^odia' fuit extrahura & seile ut extrahur' p p^odia' def. in Maniō p^odia' put p^odia' def. supius allegabit p^o p^olito idem C. die qd ip^o p^odia' die, (*Ec.*) apud D. p^odia' obtulit p^olat def. tresdecim solidi & quatuor denari legiti monete Angl in plenam satisfactionem oñis & seilure imprecōnis & pelam Equae p^odia' p^o tempore quo eadem Equa in custod ipsius def. remansit qui quidem 13 s. 4 d.

sic

Case.

Et oblat' fuer' sufficien' emende pro oñe & seifura impcacon' proclam' & pastur' & que ill' pro tempore quo equa pdia' in custod' ipsius def. remansit quos pdia' def. de eodm' C. acceptare adtunc & ibm omia recusabit, Et adhuc, (Ec.) Unde, (Ec.)

Et pdia' def. quoad pdia' plitmd pñ C. quoad oblaconem pñ def. pñcozum 13 s. 4 d. in plenam satisfaccon' oñis & seifure imparcacon' & proclam' & que ill' & pro pastur' & que pñd' pro tempore quo equa pñd' in custod' ipsius def. remansit protestando qd' pñd' 13 s. 4 d. non fuer' sufficien' emend' pro oñe ipsius def. pro seifura, &c. (ut sup'ra usq; remansit) pro plito idem def. dic' qd' pñd' C. non obtulit eidm' def. 13 s. 4 d. in plenam satisfaccon' oneris, (Ec.) remansit prout pñd' C. superius allegavit Et de hoc pon' se super priam & pñd' C. litit, &c.

Vide Bro. Red. 94. Title for a Wife. Vide 8 Co. Ent.

Rejoind.
Protestando
qd' predict' 13
s. 4 d. non fu-
er' sufficien'
emend' pro pli-
to qd' quer'
non obtulit,
&c.

Ad acc'onem
pro spadone.

Quando, (Ec.) Et dicit qd' pñd' H. Ac-
con' (non, Ec.) Quia dic' quod ante
pñd' tempus quo supponitur converco-
nem spadonis pñd' fieri scit pñd' quin-
to die Maii Anno, (Ec.) sup'radco apud
(Ec.) pñd' H. de spadone pñd' posses-
sionat' existen' eundm' spadonem cuidam
C. D. de, (Ec. gen' adtunc & ibm deli-
bit & eidem C. D. auctoritatem de-
dit ad vendend' spadonem pñd' ad usum
& proficund' ipsius H. pro tali summa &
in tali modo prout pñd' C. D. melius

Bar.
Qd' quer' deli-
beravit spado-
nem cuidam
C. D. ad ven-
dend' pro illo
Et C. vendidit
spadonem Def.
pretio (si pla-
ceret Def.) &
dedit licent'
Def. ad pro-
band' ill' per
equitac'on' 5
mille passuum,
&c.

Case.

visum foret ratione cuius pred' C. D. de spadone pred' sic possessionari existens pos-
 sita & ante pred' tempus quo, &c. scite
 pred' quinto die Maii Anno, (&c.) su-
 pradict' apud, (&c.) pred' cum prefat G.
 agreebit quod pred' G. spadonem pred' in
 possessionem suam caperet & rationabiliter
 probaret (Anglice should try him) Et si
 spado pred' tempore capcionis pred' non
 sanus esset (Anglice were not then sound)
 aut si super rationabilem probationem
 spado ille non placeret eidem G. (An-
 gllice the said G. did not like him) quod tunc
 idem G. in convenienti tempore post
 rationabilem probacionem illam redeli-
 beraret (Anglice should send back again)
 prefat C. D. spadonem pred'. Sed si pred' G.
 super probacionem illam allocaret (An-
 gllice should like) de spadone illo tunc pred'
 G. solvet prefat C. D. p. spadone illo quin-
 decim libras legis monete Angl' cum in-
 de requisit' esset cuius quidam agreamen-
 ti pretextu idem G. eodem quinto die
 Maii p. consensum pred' C. D. spadonem
 pred' in possessionem suam cepit posteaque
 scite nono die ejusdem mensis Maii pred'
 G. apud L. in Com' L. pred' super spa-
 donem pred' ad probandum si idem spado
 esset sanus & ad pte (Anglice the Liking)
 p'dict' G. p. spatium quinque mille passuum
 rationabiliter equitavit videlicet ab A. pred'
 usque D. in pred' Com' L. idemque G. hu-
 iusmodi equitacione & p. alios legiti-
 mos modos super diligente visu' (Angli-
 ce Marking) spadonem pred' esse non sa-
 tum Ita quod idem spado eidem G. dis-
 plicuit

placuit (Anglice the said G. did dislike the said Gelding) per quod idem G. postea & infra conveniend tempus scilicet decimo die ejusdem Mensis Maii Anno, (&c.) supradicto apud, (&c.) pred' spadonem pred' p'fat' C. D. redeliberabit secundum formam & effectum agreementi p'dicta' que quidam possessio spadonis pred' & equitatio ipsius G. super spadonem pred' in forma p'cedi & ex causa est eadem conventio spadonis pred' ad usum ipsius G. proprium. Unde pred' H. superius se modo queritur Cum hoc qd pred' G. verificare vult qd pred' Spado post deveniētem spadonis pred' ad manus p'dicta' G. supraspec bene tractat' fuit (Anglice was well ordered) Et in tam bono statu (Anglice in as good Case and Plight) p'dicto tempore redeliberationis spadonis p'dicta' qm Spado ille fuit tempore quo primū ad manus ipsius G. devenit Et hoc, (&c.) Unde si actio, (&c.)

Case.
Defendant dislike le Chival.

Re-delivery deins temps conveniens.

Averment del delivery in tam bono statu.

Precludi non, (&c.) Quia protestando non cogn' aliqua in p'dicta' p'lito p'dicta' G. supius allegat' fore vera pro p'lito die qd ipse p'dicta' H. p'dicta' quinto die Maii Anno, (&c.) supradicto apud, (&c.) p'dicta' possessionat' fuisset (ut in Narr' usq) ad usum suum proprium convertit & disposuit prout ipse p h're & Dare' sua pred' supius suppon' Absq' hoc qd pred' C. D. agreeabit cum p'fat' G. modo & forma prout pred' G. supius p'litando allegabit Et hoc, (&c.)

Protest' non cogn' Aliqua, &c. pro p'lito ut in Narr, Issue sur le Agreement.

Traverse.

Vide i Brown's Ent, 356. Tre. Tro. 177.

Case.

*En Transgr'
sur Case sur
Trover d'un
Chival.*

*Def. justifie
Conversion per
le Custome
d'Angleterre,
ut communis
Hospitator.*

Actio non) Quia dicit quod p totum
Regnum Angl modo hetur & a
tempore cujus contrarii memoria ho-
minum non existit talis hebatur consue-
tudo videlicet qd si equus vel equa alicu-
jus psonae sive psonarum poneretur in
aliquo Cod hospitio infra idem Regnu
ad pabuland' ac nulla psona post posico-
nem humod equi sive eque infra idem ho-
spitium veniret & solvet sive alit' agreea-
ret & componeret cum hospitatore ejus-
dem hospitii pro tempore existend' pro
pabulo ejusdem equi sive eque ante-
quam idem pabulum p humod equam in-
fra idem hospitium depast' & consumpt'
excederet valorem humod equi sive eque
tunc idem Hospitator ejusdem hospitii
pro tempore existend' usus fuit & a toto
tempore supradicto consuevit causari hu-
mod equum sive equam ad rationabilem
pretium p honestas personas de vicin'
suis appreciari & si humod apprecia-
tores sup eorum appreciacionem ejusdem
equi sive eque invenirent & declararent
pabulum humod equi sive eque infra
idem hospitium depast' & consumpt' plus
valere qm equus sive equa pced' p eos
sic appreciat rōnabilic' valebat tunc &
extunc humod hospitator p tempore exi-
stend' in cuius communi hospitio equus
sive equa pdicta' ad pabuland' in forma
pdicta' posita' fuisset humod equum sive
equam ad libitum suum p tempus pdicta'
vendidit seu alit' in usum suum pprum
con-

convertit & vendere seu alie in usum
 suū ppiam convertere consuevit p &
 erga satisfactionem pabuli per humod
 equum sive equam infra humod hospitii
 suum depast' & consumpt' Et idem R.
 dicit qd ipd p'dia' tempore quo suppo-
 nitur equū p'dia' in Parr' p'dia' supius
 specificat ad manus suas devenisse, & p
 septem annos jam p'or' elaps' & semp
 postea & adhuc est Communis hospita-
 toz tenens quoddam commune hospiti-
 um vocat le St. George and Dragon infra
 parochiam, (Ec.) in Com' H. Quodqz
 quidam W. T. decimo die Marcii An-
 no, (Ec.) apud, (Ec.) ad commune hospi-
 tiū ipsius R. p'dia' accessit ducen' secum
 equum p'dia' in idem hospitium quem
 quidem equum idem W. eidem R. ad-
 tunc & ibi delibabit in eodem hospicio
 suo pabuland' Et idem R. ulterius die
 quod equus p'dia' ab eodem decimo die
 Marcii Anno, (Ec.) usqz p'dia' primum
 diem Julii Anno, (Ec.) supradicto in
 hospicio ipsius R. p'dia' pabuland' re-
 mansit qd'qz pabulum ipsius R. p eundem
 equū inter p'dia' decimū diem Marcii
 & p'dia' diem (Ec.)
 infra idem hospitium depast' & consumpt'
 valebat sex libras legis monet Angl'
 Ac qd nulla persona infra tempus illud
 solvit eidem R. p pabulo p'dia' nec alie
 eum eodem R. p'inde composuit seu
 agreeabit p qd quidam J. R. H. M. &
 al, (Ec.) pbe & honeste plone de vicinis
 ejusdm R. & inhtad & residen' infra pū
 parochiam de, (Ec.) ad requisitionem
 ipsius

Case.

ipsius R. postea scit eodm primo die Julii Anno, (Ec.) apud, (Ec.) equum pd racónabiliter appreeiaver' ad quatuor libras & decem solid' & non ultra Sup quo idem R. postea scit eodm primo die Julii Anno, (Ec.) supradcto apud, (Ec.) equum illum in manibus suis retinuit in & erga satisfaccónem ipsius R. & p pabulo suo pdcó adtunc & ibm convertit & disposuit put ei bene licuit Absq hoc qd' equus pdia' devenit ad manus ipsius R. in pdia' Com N. seu alibi extra pred' parochiam, (Ec.) in pdia' Com H. prout pdia' S. lupius versus eum queritur Et hoc parat est verificare Unde per judic si actio, (Ec.)

Vide Rob. Ent. 26, 27. Hern. 162.

Defendant justifies as by Distress for Rent.
Rob. Ent. 450, 451. 3 Brown. 483.

Bar al Trover

*Al' Trover &
Conversion del
biens le Plain-
tiff port vers
un Waterman.*

Bar.

*Que les biens
fuer' submers.
& perdue per
tempestat' &
travers le
negligence.*

Actio non, (Ec.) Quia dic qd bene & veru' est qd pdia' Quer' delibavit Cistam pdia' cum denar' bonis & catal- lis pdia' in eadm' existen' pfat' defend' ad carriand' & portand' cistam pd' cum denar' bon' & catal' in eadm' existen' a King- ston' sup Thamesin pdia' usq ad London pdia' & ibm eidm' Quer' deliband' prout pdia' Quer' per narracónem suam pdia' lupius supposuit Sed idem Def. ulte- rius dic qd' post delibacónem ciste pdia' cum denar' bon' & catal' in eadem exi- stent idem Def. cistam pdia' cum denar' bon' & catal' in eadm' existen' in Cymba
sua

Case,

sua a R. sup Thamesin usq London' pzed' sup Rivum Thamesin pda' carria-
vit Qd' postea & antequam idem Def.
cistam pda' cum denar' bon' & catal' in
eadem existen' a Cymba pda' apud Lon-
don' pda' delibare potuit scit pzed' pda'
sexto die, (Ec.) Cymba pda' onerat' cum
cista pda' & denar' bon' & catal' in ea-
dem existen' sup Rivum Thamesin pzed'
existen' videlt' apud London' pda' in
paroch' Sed Dunstani in Occidente in
Ward' de Faringdon extra p magnu' &
violent' imbrez & tempestat' ex solo acri
Dei & absq aliquibus defen' negligend'
sive culpa ipsius Def. vel servien' suoz
submersa fuit ac cista pda' cum denar'
bon' & catal' in eadem existen' occasione
inde in aquis Rivi Thamesis pda' ob-
ruta submersa & amiss' fuer' per qd idem
Def. cistam pda' cum denar' bonis &
catal' in eadem existen' eidem Quer' de-
libare non potuit Absq hoc quod cista
pzed' cum denar' bon' & catal' in eadem
existen' p defecum bon' custod' ipsius Def.
vel servien' suoz pda' amissa fuer' modo
& forma put ead' Quer' supius inde
versus eum queritur Et hoc, (Ec.) An-
de, (Ec.)

Vide Bro. Red. 101.

A Cto non, (Ec.) Quia die qd' pda' C.
possessionat' fuit de bonis & catal-
lis pzed' ut de bonis & catal' suis
ppz' & sic inde possessionat' existen' (tali
die & anno) apud L. (Ec.) bona & catal-
la pda' delibavit quibusdam S. & H.
eisdem

Placitum en
Trover quod
Quer' licencia-
vit estrang'
impignorare
bona & catal-
la ill' pro secu-
ritate solucon'
denar' superin-
de mutuati.

Case.

eisdem S. & H. licentiando & authori-
zando quod idem S. & H. eadem bon' &
catall' (p vera & secura solucone ejus-
dam pecuniar' summe quam ille vel eor'
alter ab aliquibus mutuari conting' fi-
cnd' ad diem & dies inter eos concordat')
impignozare potuerunt Et idem W. die
qd' pdia' S. & H. de bonis & catallis
pred' possessionat' existen' postea scite
(tali die & anno) apud L. (Ec.) mutuat'
fuisse de plat' W. tresdecim libras &
decem solid' resolvend' eidm' W. in festo
Scd Johis Baptiste tunc pr' sequen' &
pdia' S. & H. pro securitate solucon' pre-
dia' tresdecim librarum & decem solid'
apud L. pdia' in paroch,) (Ec.) bona &
catalla pred' eidm' W. impignozaver'
quorum pmissorum ptertextu bona & ca-
talla pdiaa ad manus & possession' ipsius
W. debener' & pdia' tresdecim libz' &
decem solid' eidm' W. adhuc mie solut'
existunt Et ulterius idem W. die quod
ipse semp a pdia' die, (Ec.) Anno. (Ec.)
supradicto paratus fuit & adhuc parat'
existit ad deliband' bona & catalla predice
& ille parat' hic in Cur' profert si predia'
S. & H. vel eorum altera pdia' tresde-
cim libz' & decem solid' solvere voluerint
Et hoc, (Ec.) Unde, (Ec.)

Repl.

Qd' non licen-
tiavit. Etc.

Precludi non, Quia die qd' ipse idem
C. non licentiavit pdia' S. & H. bona &
catalla pdia' impignozare modo & forma
pout pdia' W. supius plitando allega-
vit Et hoc petit qd' inquiretur p Priam
Et pdia', C. silit', (Ec.)

Vide

Vide Thomp, Ent. 61. Treatise of Trover, 158.
 2 *Mod. Intr. 149. Non cul'* to part, and to
 the Residue he pleads another Action in Bar,
 and Recovery thereon. *Tres. Tro. 163.*

Defendant justifies as Bailiff of a College.
Bro. Red. 102.

Defendant says, the Goods were pawn'd to
 him by the Plaintiff. *Rob. Entr. 43.*

Defendant, as Captain of one of the King's
 Men of War, justifies Seizing a Ship and
 Goods as Prize merchandizing against the
 Royal Prohibition. *Bro. Red. 69.*

Defendant justifies taking the Boat as a
 Wreck. *Rob. Ent. 445. 62.*

Defendant pleads Judgment upon a Verdict
 in Trespass, &c. *Winch. Ent. 99.*

Defendant justifies seising the Goods as for-
 feited by Default of Appearance to the Bailiff
 of *Westminster. Rob. Ent. 447. Vide Trea. Tro.*
181. Justification as Bailiff of a Court-Baron.

As to Bars and Pleadings in *Trover*, it is to
 be observed that formerly they were of divers
 Sorts: As,

Bar,

By Release. *Vide Hern's Pleader 123. 1 Browne*
387. 5 Rep. 27. 1 Cro. 49. 3 Cro. 171.
1 Roll. 730.

By Licence. *vide Thomps. 61.*

By Command. *Poph. 208.*

By Accord and Arbitrament, because Dama-
 ges are only to be recovered.

By Outlawry. *3 Leon. 205.*

By Custom. *Rob. Ent. 26. Hern. 162.*

By

Case.

By Recovery in other Actions. *Winch. Entr.* 62, 99, 100, &c. *Co. Entr.* 39. § *Rep.* 61. *Ventr. Rep.* 2d Part 169.

By Execution. *Rob. Entr.* 451. *Cro. Eliz.* 504.

By Demise. *Winch. Entr.* 31; 32.

By Attachments. 1 *Keb.* 211.

By Distress. 3 *Brownl.* 483. *Stiles Rep.* 12, 13.

Cro. Jac. 255. *Cro. Eliz.* 901. *Relv.* 194.

By Sale, *Rast.* 675. *Rob. Entr.* 30.

— In Market Overt. *Rast.* 675. *Winch.* 109

Hern. Pl. 251. *Rob.* 24, 25, 448. 9. 450.

1 *Brown* 387, 389. *Thompf.* 62, 69, 234.

By Pledge, or Pawn. *Rob. Entr.* 43. *Hern.* 177. 209.

As for Tythes. *Latch. p.* 8. 176. 184.

As a Waif. § *Co.* 109. *Cro. Eliz.* 611, 693.

1 *Keb.* 509.

As an Estray. *Co. Entr.* 40 *Cro. Eliz.* 716, &c.

General

Issue. Special Matter in Evidence.

But now many of these are reduced to the General Issue, *Not Guilty*, and the Special Matter may be given in Evidence, and some of them may be either Way.

First then, upon the General Issue it's said the Defendant may give any Thing in Evidence, which proves the Plaintiff hath no Cause of Action, or which doth entitle the Defendant to the Thing in Question. 1 *Inst.* 283. But generally a Justification or Excuse must be pleaded.

Custom to take Toll.

The Citizens of *London* gave in Evidence their Custom to take Toll. *Jones* 240. And it's there said, Every Thing which proves the Conversion legal, may be given in Evidence upon the General Issue.

That

That the Matter of an Estray may be Case.
pleaded Specially, or given in Evidence, up- Estray.
on *Not guilty*.

The Defendants gave in Evidence, That Commission
the Goods were taken and sold by Vertue of of Sewers.
the Commission of Sewers, *Allen's Rep.* 92.

The Defendants gave in Evidence a Seizure Custom of
for Goods foreign bought and foreign sold, by Goods fo-
the Custom of *Lynn*. reign bought,
&c.

In Trover; That they were not the Goods Not the
of the Plaintiff, is good Evidence. § *H.* 7. 2. Plaintiff's
Per Dodderidge: In Trover and Conversion Goods.

of Goods, if the Defendant derive a Title Bailment
from a Stranger, this amounts to the general and Delive-
Latch. 186. And Bailment of the Goods to ry.

deliver to another, and Delivery accordingly,
amounts to the General Issue, and may be
given in Evidence upon it. 3 *Bulstr.* 209.

Defendant may give in Evidence, That the Pawn, Di-
Goods were pawned to him for 10*l.* or that he stress, &c
distrain'd them for Rent or Damage-feasant,
or took them as Tythes severed, or took them
as a Sheriff in Execution.

If the Plea in Bar doth not answer the
Declaration in Trover, but amounts to the
General Issue, then it's said the Plaintiff may
demur; but need not shew Cause of his De-
murrer.

But if the Defendant admits a Property in *Regula*,
the Plaintiff, he may plead any Special Mat-
ter to oust him of it, or to justifie his doing.
And if the Plaintiff does not shew Cause of
his Demurrer, that it amounts to the General
Issue, it will be for the Defendant: As where
the Defendant pleads a Sale by a Stranger in a
Mar-

Case. Market overt. The Plaintiff demurs generally; and adjudged for the Defendant, that Cause ought to be shewn. 3 Cro. 485. *Comins and Boyer*.

Special Justification,
when.

He who will make a Special Justification, ought to make it of such a Thing which is not justifiable to be done without some Special Cause; otherwise his Justification will amount to the General Issue. 1 Roll. Rep. p. 1. *inter Hill and Hawkes*.

Justification by Distress for Damage-feasant amounts to the General Issue. Hob. 187. Cro. Eliz. 4, 33.

So by Distress for a Rent-charge, Absque hoc that he converted them; Ill.

What Pleas
amount to
the General
Issue.

In Trover for Corn; the Defendant makes Title to them as for Tythes severed. The Plaintiff demurred Specially, because it amounted to Not guilty, and Judgment for the Plaintiff: For this Action comprehending a Title in it, such a Plea is not allowable. Cro. Car. 157. 2 Bulstr. 204, 205.

Trover for a Horse; the Defendant pleads, that he being a common Inn-keeper took the Horse to Livery, at Rack and Manger, and the Horse died in his Custody. This Plea is said to be ill, because it only amounts to Not guilty. 1 Roll. Rep. 22.

Trover for a Mare; the Defendant pleads, That after the Trover alledged, he re-delivered the Mare to the Plaintiff, which he accepted. The Plaintiff demurs Specially, because it amounted to the General Issue: *Judic pro Quer.* 2 Keb. 405, 437. *Denny and Terry*.

Plain-

Plaintiff declares, That the Defendant found his Goods, and delivered them to Persons unknown: *Non delibabit modo & forma* is no Plea; but he ought to plead Not guilty to the Wrong supposed. 1 *Leon.* 222.

For a Sale to Persons unknown, the Defendant pleads *Non vendidit modo & forma Et hoc paratus, &c.* amounts to the general Issue. 1 *And.* 30. *Dyer* 121.

That the Plaintiff was not possess'd *Ut de Bonis prop?* is no Plea, for he ought to plead *Non Cul* to the Misdemeanor, and give the other Matter in Evidence. 33 *H.* 8.

The Defendant pleaded, that the Plaintiff pawn'd the Goods to him for 10 *l.* and that he detain'd the Goods for 10 *l.* It's said to be no Plea, for that he ought to plead the General Issue, and give the Matter in Evidence; and the Defendant ought to plead Not guilty to the Wrong supposed. *Mod. Rep.* 138.

And it's said, that in this Action, every Thing which proves the Conversion legal, may be given in Evidence upon the general Issue. *Jones Rep.* 240. Rule of Evidence.

And in 1 *Keb.* 303. *Twisden* said, there is no Plea in Trover, but a Release or Not guilty, every Special Plea in Justification being tantamount.

But *vide Ventris Rep.* 2 d Part p. 295. where upon a Plea the Plaintiff demurred, and it was said that the Plea amounted to the general Issue, and that if the Matter would avail the Defendant, it might be given in Evidence. To which it was answer'd, That it was no General Rule, that a Matter could not be
B b pleaded

Case.

Case.

pleaded specially, which might be given in Evidence upon the General Issue: For in an Action of Debt for Rent, an Entry and Suspension of the Rent may be given in Evidence upon *Nil debet*; yet 'tis always allowed to be pleaded, and so *Nil huius in reūtis*: And whenever the Matter pleaded contains Matter of Law, it is allowed to be pleaded, tho' it might be shewn upon the general Issue. *Hob. 127.* And of that Opinion were the Court, *Mich Anno primo Willm & Marie.*

Regula.
Matter of
Law.

Where a
Man may
plead Spec-
ially or Ge-
nerally.

And it's said a Man is allowable in Two Cases to plead Specially where he may plead the General Issue, and give the Special Matter in Evidence.

1. When a Defendant by his Plea doth admit some Colour of Action to be in the Plaintiff, but sheweth some Special Matter of Fact to avoid it. 10 Co. 88.

2. Where a Man pleads Matter of Law, which admits the Fact, but is not proper for a Jury, tho' it amounts to Not guilty.

Colour.

A Release is a Bar in Law, yet may be given in Evidence. It may be pleaded without giving any formal Colour, for that it implieth that the Plaintiff might have his Action else, and the Defendant needs not intrust a Jury with a Matter of Law, but refer it to the Consideration of the Court,

So in an Action of Trespass or Trover for taking away Goods, the Defendant pleads he bought them in Market Overt: This is a good Plea, because it acknowledgeth that the Plain-
tiff

tiff had a good Cause of Action, if it had not been for the Properties, being by Act of Law altered and vested in the Defendant.—— And that a Discharge in Law from the Action is most natural and proper to lay before the Court.

21 *Ed. 3. fol. 17.* To a Conspiracy, Defendant justifieth as an Indictor; yet upon Not guilty, this in Evidence would have discharged him.

Mo. 600. pl. 828. Plaintiff demurred, because the Defendant's Plea amounted to Not guilty; for the probable Cause was the Gift of the Action; and that answered the Doing of it without probable Cause, and yet held good Plea and Justification. See 3 *Cro. 871, 900, 2 Cro. 130.*

So *Kelway Rep. fol. 81.* and *Dyer 285.* he justified Specially, tho' he might have pleaded Not guilty, and the Special Matter would have fetch'd him off. But he would set forth Legal Justification in his Plea, that he was under the Protection of the Law, and it was held to be sufficient. *Vide Bridg. fol. 130.*

So that it plainly appears by these last Authorities, that where the Defendants have Matter in Law to defend themselves by from the Plaintiff's Action, they may either save to themselves the Benefit of that Defence, upon the General Issue, or plead the Special Matter, and it shall be a good Justification in Law. But however it is in Trespass. yet 'tis good to be cautious here in these Things; for seeing that in this Action almost all are resolved into the General Issue, and to give the Special Matter

Case. in Evidence, look to it for what Purpose you plead specially.

Colour.

Vide 10 Co.
Leyfeild's
Case touch-
ing Colour.

Also in 2 *Bulst.* p. 134. It's said no Colour will serve in this Action, but that he ought to traverse the Plaintiff's Title. Yet it appears otherwise by 10 Co. *Leyfeild's* Case; and he that claims in a Market-Overt, shall not give Colour if he pleads generally: But if he pleads that *J. S.* was possessed as of his own Goods, and sold them in a Market-Overt, or waived them, there he shall give Colour, because he confesseth no Interest in the Plaintiff; yet no Colour shall be given where it goeth to the Bar of the Right, for it would be in vain to give Colour of Right, and to bar him if he had Right.

Also it's said, That in Trespass, Colour of Possession given by the Defendant to the Plaintiff sufficeth, because the Declaration is general upon a Supposal, without any certain Title; and that it is sufficient to answer a Supposal with a Colour of Possession only. But that in Actions of Trover, and in all other Actions where the Plaintiff makes Title to the Thing demanded, or to a Thing for which he demands Damages, there the Defendant ought to make a better Title to himself, and to traverse the Title of the Plaintiff, or else to confess and avoid it. *Yelv.* p. 174.

Traverse.

In Trover and Conversion, the Conversion is traversable, and therefore Time and Place of a Conversion must be set down in Pleading. 1 *Cro.* 97, 201, 555.

And

And the Conversion is said to be seldom traversable, except in a Special Matter, as where *A.* lends Money to *B.* and *B.* delivers him a Pawn for it, here the Conversion is traversable.

So where the Plaintiff pleads, that the Money was delivered to him to keep it till *A.* and *B.* were agreed who should have it; and that *A.* and *B.* were not agreed, *absq; hoc*, that he converted it, &c. 1 *Leon.* 247. 2 *Leon.* 94. 2 *Bulst.* 307.

1 *Leon.* 189, 222, 223. The Property is not traversable, nor the knowing.

Yelv. p. 199, 200. Matter in Law is not traversable.

Where a Justification in Trover ariseth upon a Sale, there needs no Traverse of any more than the Place alledged, and not the whole County: But if it be transitory, as in Trespass, Battery, Taking Goods, &c. there the whole County must be traversed. *Brownl. Rep.* 17. But this is only upon a Special Justification, by reason of his Office, or such like. 1 *Roll. Rep.* 44. *Vide* 3 *Bulst.* 209.

When the Defendant in Trover pleads *Non* Property *Cul*, the Plaintiff must prove his Property proved. in the Goods.

Where a Man claims not any Interest, but justifies by Command or Authority derived from another, the Plaintiff may reply *De injuria sua propria*; but 'tis no Repl' where the Defendant justifies by claiming Interest in the Freehold to himself.

Case.

Disturbance.]

Disturbance
of Burial.

Bar.

*Prescription de
payer 6s. 8d.
pro fractione
soli in Ecclesia.*

*Travers del
prescription en
le Court.*

Et p̄dicta G. p̄—Attoꝝ suum veñ
& defendi vim & injur' quando, &c.
& dic' qđ p̄dicta R. actionem suam p̄dicta' ver-
sus eum here non debet quia protestan-
do quod p̄dicta' R. & omnes illi quozum
statum idem R. modo het de & in Ma-
nerio p̄dicta' cum p̄tin' ac firmarii & te-
nentes sui p̄dicta' Capitalis Messuagii
cum p̄tin' a toto tempore supradic' non
sustentaverunt & reparaverunt Insulam
p̄dictam sumptibus suis p̄p̄tis de
tempore in tempus toties quoties ne-
cesse foret ac ratione inde non solum loca
& sedes p̄ seipsis & famulis suis in ead'
Insula ad audiend' divina servicia in
eadem Ecclesia celebrazand' per totum tem-
pus supradictum fuerunt p̄out p̄-
dictus R. p̄ Breve & Parr' sua p̄dicta' su-
pius suppon' p̄ p̄lito dic' quod omnes &
singule persone que corpora aliquozum de-
functoꝝ infra Ecclesiam p̄dictam sive Can-
cellam vel aliqua les Mēs Ecclesie p̄-
sepeliri desideraver' & Sepulturam pro-
inde obtinuer' solverunt & per totum
tempus supradictum solvere consuebe-
runt sex Solidos & octo Denar' pro frac-
tione soli in Cancellam vel tres Solidos &
quatuor Denar' in Pavi Ecclesie Vicario
& Incumbenti Ecclesie p̄dicta' ejusbe fir-
mario aut Deputato p̄ tempore existend'
Absq' hoc qđ p̄dicta' R. & omnes illi quo-
rum statum idem R. modo het de & in
Manerio p̄dicto cum p̄tin' ac firmarii

Case.

& tenentes sui pzed' Capitalis Messua-
gii cum pertin' a toto tempore supza-
dicto corpora defunctor' in p'dia' Capita-
li Messuagio morien' infra eandem In-
sulam sepeliver' & ibm pzo convenien' se-
pultura Corporum eorundm' defunctorum
in eodem Capitali Messuagio morien' se-
pulchra (vocat' Graves) in eadem Insula
ad eorum libitum fecerunt & fieri con-
sueverunt absque aliquo pinde reddendo
aut solvend' Vicario aut alicui alio In-
cumbenti Ecclesie Parochialis pzedict'
ejusve seu eorum alicujus firmaria aut
deputatio pzo tempore existen' puz p'dia'
R. per Breve & Parr' p'dia' supius sup-
pon' Et hoc paratus est verificare Unde
petit judicium si p'dia' R. actionem suam
p'dia' versus eum here debeat, &c.

Et p'dia' R. dic' qd' ipse p aliqua pal-
legat' ab actione sua p'dia' hend' pzecludi
non debet quia ut prius dic' qd' ipse &
omnes illi quozm' statum idem R. modo
het de & in Manerio p'dia' cum pertinen'
ac firmarii & tenentes sui p'dia' Capita-
lis Messuagii cum ptinen' a toto tem-
pore supzadicto corpora defunctor' in p'dia'
Capitali Messuagio morien' infra ean-
dem Insulam sepeliver' & ibm p conve-
nien' sepultura corporum eorundm' defunc-
torum in eodem Capitali Messuagio mo-
rien' Sepulchra (vocat' Graves) in eadm'
Insula ad eoz libitum fecerunt & fieri
causaverunt absque aliquo pzoinde red-
dendo aut solvendo Vicario sive alicui
alio Incumbenti Ecclesie Parochialis
p'dia' ejusve seu eoz alicujus firmar' aut

Repl.
*Et Issue sur le
prescription.*

Case.

Deputato pro tempore existend put idem
 R. supius versus eum queritur Et hoc
 petit qd inquiratur p Patriam Et pdict'
 G. sicut Jo pcept' est Vic' quod venire
 fac hic, &c.

Vide Co. Entr. 8.

*Note, If a Man and his Ancestors, Time
 out of Mind, have had an Isle in a Church
 for Seats, and the Burial of such as die in his
 House as appendant to his House, and the
 Parson, Vicar, or any Stranger disturb him
 therein, he may have an Action on the Case,
 New Book of Entries. 9.*

*Pl'it' ad Narr'
 pur disturbance
 in sedeli Eccle-
 sie qd' def. ha-
 bet sedem in
 Cella Ecclesie
 & travers' qd'
 omnia loca per-
 tin' ad quer'.*

Actio non, &c. Quia dic qd ipse p^r
 J. est & p quatuor annos jam ul'
 elaps' fuit & adhuc existit scit' de & in
 uno antiquo Messuagio (vocat', &c.) cum
 p^rin' in Parochia de B. in Dⁿico suo
 ut de feodo Q^uid idem J. & omnes An-
 tecessores sui & omnes illi quorum statum
 idem J. het in eodm' Messuagio cum per-
 tin' a tempore cujus contrarii memoria
 hominū non existit fuer' & here consue-
 ver' libtat' sedendi genuflectendi & standi
 in uno loco (Anglice Room) in quodam
 sedeli ab antiquo erect' & situat' in Cella
 pdict' in pdict' occiden' parte Ecclesie p^r
 diebus Dominicis & festival' ac aliis
 diebus in quibus Divinū Serviciū aut
 Verbu' Dei in Ecclesia pdict' lea' pdicat'
 aut Sacra in Ecclesia pdict' celebrat'
 fuer' ad eodm' Divinū Serviciū & Ver-
 bum Dei in Ecclesia pdict' lea' pdicat' &
 sacra celebrat' in eodm' sedeli intenden'

& audien^t tanqm^{ad} ad Messuagiū illud per-
tinen^t p^{er} qđ idem J. p^{re}dicat^{ur}, (Ec.) Et di-
versis diebus & vicibus p^{re}dicat^{ur} supertus
specificat^{ur} in sedeli p^{re}dicat^{ur} sedebat put^{et} ei
bene licuit Absque hoc qđ p^{re}dicat^{ur} C. omnia
loca & sedilia in Cella p^{re}dicat^{ur} p^{ro} seipso
& famulis suis diebus Dominicis & Fe-
stival^{ibus} Et aliis diebus in quibus Divinū
Serviciū aut Verbum Dei in Ecclesia
p^{re}dicat^{ur} lect^{ur} sive p^{re}dicat^{ur} aut Sacra in Ec-
clesia p^{re}dicat^{ur} celebrat^{ur} fuer^{it} sedendi genu-
flectendi & standi & eadem Divinū Ser-
viciū & Verbum Dei in Ecclesia p^{re}dicat^{ur}
lect^{ur} & p^{re}dicat^{ur} & Sacra celebrat^{ur} in eod^{em}
intenden^t & audien^t fuit Et a tempore
supradicto here consuevit p^{ro}ut p^{re}dicat^{ur} C.
supius versus eum narrabit Et hoc,
(Ec.) Unde petit Iudiciū si Accio, Ec.
Vide Bro. Red. 96.

Et p^{re}dicat^{ur} C. D. p^{er} J. R. Attoz^{um} *Disturbance de*
suum ven^{it} & defend^{it} vim & injur^{iam} *Chymin.*
quando. Ec. Et dic^{it} qđ p^{re}dicat^{ur} C. D. acio-
nem suam p^{re}dicat^{ur} versus eum habere non
debet quia dic^{it} qđ ipsemet p^{re}dicat^{ur} tempore
quo, Ec. fuit seisc^{it} de p^{re}dicat^{ur} duabus par-
cell^{is} terr^e cum p^{er}tinen^t (vocat^{ur} Southmore
and Northmore) in Dominico suo ut de
feodo Et sic inde seisc^{it} existens idem C. D.
p^{re}dicat^{ur} tempore quo, Ec. easdem parcel-
las terre cum p^{er}tinen^t inclusit p^{ro}ut ei
bene licuit Absque hoc qđ p^{re}dicat^{ur} nuper
Dux Et omnes Antecessores sui ac om-
nes illi quorum statum idem nuper Dux
habuit de Et in p^{re}dicat^{ur} Messuagio & du-
cent^{ur} acris terre a tempore cujus con-
trax^{it}

Case.

trar' memoria hominum non existit ha-
buerunt Et habere consueverunt pro se
firmariis & tenent' suis eorundem Mess-
suagii & centum accrarum terre quan-
dam viam tam pedestrem qm equestrem
omni tempore anni cum omnibus & om-
nimod' carriagiis suis in super Et ultra
predia' duas parcell' terre ipsius C. D.
(vocat' Southmore and Northmore) in G.
predia' a Messuagio & ducent' acr' terre
pred' eundo & cum carriagiis suis carri-
and' usque pred' Parcum ipsius nuper
Ducis (vocat' Greatham Park) in Com
pred' Et ab eodem Parco usque ad pred'
Messuagium & ducent' acr' terre a toto
tempore supradicto redeundo Et cum car-
riagiis suis recarriand' tanquam eidem
Messuag' & ducent' acre terre cum perti-
nen' prout predia' C. P. p Breve & Parr'
suam predia' superius suppon, Et hoc
parat' est verificare Unde pet' Iudicium
si pred' C. P. action' suam predia' versus
cum here debeat, &c.

Repl.

Et pred' C. P. dic' qd ipse p aliqua
palligat' ab actione sua pred' hend' pcludi
non debet, Quia ut prius dic' qd predia'
nuper Dux & omnes Antecessores sui
ac omnes ill' quorum statum idem nuper
Dux habuit de & in pred' Messuagio &
ducent' acr' terre a tempore cuius conerac'
memoria hominum non existit huerunt
& here consueverunt pro se firmariis &
tenentibus suis eorundem Messuagii & du-
cent' accrarum terre quandam viam tam
pedestrem qm equestrem omni tempore
anni cum omnibus & omnimod' carria-
giis

Case.

iis suis in super & ultra pdictas duas
 arcellas terre pdicta C. D. vocat' S. &
 p. in G. pdicta a Messuagio & ducent'
 er terre pdicta eundo & cum carriagiis
 iis carriandis usque pdicta Parcum ip-
 ius nup Ducis (vocat' G. Park) in Com
 dia' & ab eodem Parco usque ad pdicta
 Messuag & ducent' acr terre a toto tem-
 pore supradicto redeundo, & cum carriagiis
 iis recarriando tanquam eisdem Mes-
 suagio & decent' acr terre cum ptinen
 out ipse p Breve & Parr' sua pdicta su-
 perius suppon, Et hoc pet' qd inquirat-
 ur p Patriam, Et pdicta C. D. filie
 Jo pcept est Dic qd Venire fac hic in
 Octabis Sed Martini xii. Ec. p quos,
 Ec. Et qui nec, Ec. Ad recogn, Ec. Quia
 am, Ec.

Co Ent. 12. Bar qd pater Quer' dedit'
 p. Licentiam ad includend partem Com
 t Del' ut ejus Serviciu eandem in-
 cludit & inclusum custodivit. Winch.
 Ent. 77.

Bar p Cons' Tenentibus in feodo
 claudere terras jacent in Campis & eas-
 dem in separalitate custodire Rept de in-
 iur ppd, Et traverse le Custom, Et
 Issue inde. 1 Hansf. 23.

Note, If a Man, Time out of Mind has
 had a Way to his House, Ground, Common,
 or other Place by Custom, Prescription,
 Feoffment, or otherwise, and another Person
 disturb or hinder him in it, he may have an
 Action on the Case. See 1 Cro. 427, 619.
 2 Cro. 673. Relv. 159. Hutton 27. 2 Bul. 121.
 Noy 37, 120. He

Case.

He that claims such a Way, must prescribe for a *quo terminus ad quem*, for he may not go over my Ground, but to the right Place. *Hob. 254.*

If *A.* have a Way over the Close of *H.* and *H.* sows the Close, and leaves a Way in another Part, yet he may justify to go where the ancient Way is, and is not bound to go in the new. *Noys Rep. 128.*

Custom.
Plitum' qd'
Rectores &
Firmar' usi
fuer' carriare
Decimas ad
sua propria o-
nera & tra-
vers le Custom
alledge per
Quer'.

Et p̄dica' C. D. p̄ — Attorū suū ven-
tē defendi vim & injuriam quan-
do, &c. Et dic qd̄ p̄dica' G. actionem
suam p̄dica' inde vsus eum here seu ma-
nutener non debet quia dic qd̄ bene &
hum est quod idem C. p̄ p̄dica' spatiū
quinq; annoꝝ jam uli' p̄tit' & amplius
possessionat' fuit & adhuc possessionat' ex-
stitit de p̄dica' trigint' acris terr' cum per-
tinebat iacēt & existē in p̄. p̄dica' put p̄-
dica' G. p̄ narratō suam p̄dica' supe-
rius suppon, Et idem C. protestando
qd̄ ipse non messuit collegit & univit
tanta blada de & ex p̄dica' trigint' acris
terre quant' p̄dica' G. superius narrando
allegabit p̄ placito idem C. dic qd̄ p̄-
bendar' p̄bend' p̄dica' & eorum firmar'
inde pro tempore existē a toto tempore
supradico usi fuerunt colligere & carri-
are ad onera sua p̄pria omnes decimas
granorum p̄bend' p̄dica' spectan' de & a
terris ubi grana illa crescebant ubicunq;
eis placeret, Absq; hoc qd̄ infra Villam
de p̄. p̄dica' est & a tempore cujus con-
trarii memoria hominum non existit
fuit quedam antiqua consuetudo usitat'

&

approbat' qđ omnes possessores firmar' sive Occupatores aliquarum terrarum jacen' & existen' in R. pđia' existen' parcelle revention' p̄bend' de B. pđia' a tempore cujus contrarii memoria hominū non existit usq' fuerunt & consuever' carriare (Anglice to lead) quemlibet decimū cumulum (Anglice Shock) grani quotibet Anno crescent' super aliquibus terris in R. pđia' existen' parcelle revention' p̄bendar' de B. pđia' a loco sive locis ubi grana ill' crescebant usq' ad pđiarum portum (vocat' the Barn) p̄bend' pđia' in R. pđia' pro usu p̄bendar' p̄bend' p̄bendar' sive ejus Deputat' & firmar' decimarum pđiarum pro tempore existen' modo & forma p̄out pđia' G. superius inde narrando allegabit, Et hoc parat' est verificare unde petit Judicium & pđia' G. actionem suam p̄dictam inde versus eum here seu manutenere debeat, &c.

Et pđia' G. dic' qđ ipse p aliqua p pđia C. superius placitando allegat' ab actione sua pđia inde versus ip'm C. hēd' pcludi non debet quia ut p̄ius dic' qđ infra Villam de R. pđia' est & a tempore cujus contrarii memoria hominum non existit fuit quedā antiqua consuetudo usitat' & approbat' qđ omnes possessores firmar' sive occupatores aliquarum terrar' jacen' & existen' in R. pđia' existen' parcelle revention' p̄bend' de B. pđia' a tempore cujus contrarii memoria hominū nōd existit usq' fuer' & consuever' carriare (Anglice to lead) quemlibet decimū cumulum (Anglice Shock) grani quotibet

Repl.
And Issue sur
Traverse.

Case.

bet anno crescen' super aliquibus terri
in P. pzed' existen' parcell' revention' pzi
bend' de B. pzedia' a loco sive locis ul'
grana ill' crescebant usque ad pzedic
horreum (vocat' the Tythe-Barn) pzedic
pdiat' in P. pdiat' pro usu pbendar' pzi
bend' pdiat' sive ejus Deputat' aut fin
mar Decimarum pzed' pro tempore exi
stend' modo & forma pziout ipse idem G. su
perius inde narrando allegabit, Et ho
petit qd inquiratur p pziam, Et pdia
C. sinit Jo, &c. Vide Thomps. 75.

Mich. 44 Eliz.

For disturb-
ing the She-
riff in his
Execution.

AN ACTION upon the Case brought, suppo
sing that one G. Berisford was indebt
unto the Plaintiff by a Statute Staple in 200
and that he sued Execution ; and that the She
riffs of London, by Force of the Writ impan
nelled a Jury to enquire what Goods, &c.
and that there were divers Goods of the said
G. Berisford in such a House in London, and tha
the Sheriff came with the said Jury to have
View of them, and to appraise and seise them
for this Debt ; and that the Defendant pze
missorum non ignarus, shut the Door and
disturbed him to make Execution, &c. The
Defendant entitles himself to the Possession of
the House, by reason of a joint Lease made
unto him and one G. Berisford, and that he
had it by Survivorship, and that he shut the
Door for the saving his Possession. The Plain
tiff replies, That the said G. Berisford, mention
ed in the Bar, and he who was bound by the
Statute, were the same Person. Defendant de
mur.

murred — The chief Question was, Whether this Shutting the Door was a Disturbance of the Execution? And whether the Plaintiff might thereupon maintain this Action? And first it was agreed by the whole Court, That upon a *Capias ad satisfaciend'*, the Sheriff may not break open any Man's House to make Execution, but he is punishable for doing it; but upon a *Capias Utlagat'*, he may well enter any Man's House to apprehend him, for no Place ought to protect him against the King, and he being out of the Law, shall not have the Protection of the Law. But whether he might upon a *Fieri facias*, or *Ex-tendi fac'*, break the House of any to make Execution, they doubted; but there is no Doubt, if the Door be open, but that the Sheriff might enter, for the Law gives him Authority thereto, as an Executor may enter to take Goods left there by the Testator: And for this Cause, *Gawdy* and *Popham* held, That the Action here well lay, because by this Shutting of the Door, the Party was disturbed to have his Execution. But *Fenner* & *Yelverton* *econtra*; for the Goods being in the Defendant's House, who is a Stranger to the Execution, he is not bound to take Cognizance of the Sheriff's Intent in coming to make Execution, and his Shutting the Door was lawful; and altho' there was Loss to the Plaintiff, yet it was *dampnum sine injuria*; and it appears not the Goods of the Conizors, which are in the Defendant's House, came thither, and if they were taken by the Defendant as a Trespassor, the Party whose Goods they are, or the Sheriff upon Execution, may come within the House, if
the

Case.

the Door be open, to seise them, because the Defendant had them by unlawful Means; but if the Defendant had taken them by lawful Means, *viz.* by Bailment or otherwise, neither the Party himself, nor the Sheriff, can come within the House to seise them; and therefore the Shutting of the Door is no Cause of Action for the Plaintiff, and therefore the Action lieth not, &c. and it was adjourned. And afterwards, in *Mich 20 Jacobi*, this Case was argued again, and then *Williams* agreed with the Opinion of *Yelverton* and *Fenner* in omnibus, and that the Sheriff might not break any Man's House to take Execution unless in the Case of the King, or for a Contempt, &c. and thereupon it was adjudged for the Defendant. *Vide 1 Cro. 908. Seyman and Gresham. Vide postea.*

Note, An Action of the Case will lie against him, that shall hinder, disturb, or prejudice, him that hath the Franchise, or Liberty of the Execution, and Return of Process in a Hundred or other Place. *F. N. B. 95. Reg. Orig. 103, 204.*

So if a Man be disturbed to take the Profit of his Office. *1 Cro. 548. Popb. 141.*

So against him that shall disturb an Officer in the Execution of his Office; as in the Attaching or Distraining of Goods, *N. B. 102. F.* and lieth either for the Officer, or for the Plaintiff in the Suit.

So it's said, if one hinder an Officer in doing of Execution in his Office at my Suit; as where the Sheriff shall come to another Man's House, where the Goods of the Defendant are, and the Door of the House being open, another

Case.

ther Man, not the Owner of the House, doth shut the Door and keep him out, or the Owner of the House, or another Man shall convey away the Goods, and prevent my Execution, I may have this Action against him. But if a Man do so in his own House, or to prevent the Execution upon his own Goods doth this, no Action will lie. 5 Co. 91. 1 Cro. 308, 309. *Hill. 20 Jac. B. R. Wood's Case* adjudged.

So it's said, If I have an Execution against the Goods of *J. S.* and he hath Goods in the House of *K. L.* and the Sheriff comes to the House, and tells *K. L.* what he is, and wherefore he comes, and desires him to open the Doors to him, and he keeps him out that he cannot do Execution, I may have this Action against *K. L.* 5 Co. 93.

So if an Officer be coming to arrest a Man, or attach his Goods at my Suit, and another Man convey away the Goods, or the Person, so that the Officer cannot do his Work, I may have this Action. *F. N. B. 102. 21 H. 7. 40. 18 Ed. 3. 3.*

Disturbance in Office.

THE Plaintiff declares, That Sir *J. A.* was seised of the Manor of *M.* and of another Manor, and granted to the Plaintiff by Deed to be the Bailiff of the said Manor for Life; and that the Defendant had disturbed him in his said Office, in his collecting of Rent, viz. of the Rents of *S.* and *D.* &c.— Defendant confesseth the Seisin of Sir *J. A.* and his Grant to the Plaintiff, but that afterwards

C c

he

Case.

he sold the said Manors to J. S. who appointed the Defendant to be Bailiff there, and that thereupon he collected the Rents, &c. Plaintiff demurs: And 'twas the Opinion of the Court, That the Purchaser of the Manors might discharge the Plaintiff, and revoke that Grant, altho' it were for Life, because he sheweth not that there was any Fee granted for the Execution thereof, nor that he had any other Profits by exercising of it, for without Profits it is but an Office of Trouble; and then the Plaintiff hath not any Cause to complain, when he hath not any Loss; but if he were to have had a Fee, or other certain Profits for the executing thereof, it had been otherwise, therefore it was adjudged for the Defendant. *Vide 1 Cro. 859. Harvey and Newlyn.*

Disturbance
de Com'on—
Defendant
plead *Quoad*
part non cul'
quoad resid'
pled' Bar. Pro
Coia' apper-
tinen' per cons'
manerii & in
terra quer'
causa Vici-
nagii.

ET p̄dica' C. p̄ J. S. Altorū suū
venit & defend' vim & injur' quan-
do, &c. Et quoad possessionem aliquorum
porcorū seu vidend' in p̄dica' pecia pastur'
(vocat' Basingham Common) ac depast'
conculcatōn' & consump̄cōn' herbe p̄dica'
ibm cum porcis & bidentibus p̄dica' dic'
qđ ipse in nullo est inde Culpabilis pro-
ut p̄dica' G. superius versus eum queritur
Et de hoc pōn' se super p̄riam. Et p̄e-
dica' G. similiter, Et quoad positionem
equorum vaccarū & bovirū p̄dictorum in
eandem peciam pastur' (vocat' Basingham
Common) ac depast' conculcatōn' & con-
sump̄cōn' herbe p̄dica' in eadem cum
equis vaccis & bobus p̄dictis superius
fieri suppōit' dic' qđ p̄dica' G. actionem
suam p̄dica' inde versus eum here non
debeat

debeat quia dicitur quod bene & verum est quod
 predicta nuper Episcopus Norwic fuit scilicet
 de predicta Maneria de Churgaton cum
 pertinenti in Dñico suo ut de feodo in iure
 Episcopatus sui predicta unde predicta Messu-
 suagium & quinque acra terre cum pertinenti sunt
 & a tempore cujus contrarii memoria
 hominum non existit fuerunt parcelle & a
 toto tempore supradicto dimissa & dimis-
 sibilis per Copiam Rotlozum Cur' Manie
 predicta per Dominum Manii illius vel
 per Senescallum suum Cur' ejusdem Manie
 pro tempore existentem cuicunque persone libe-
 quibuscunque personis illa capere volenti
 vel volentibus in feodo simplici ad Ter-
 minum vite vel annorum ad volun-
 tatem Dñi secundum consuetudinem Manie
 predicta, Quod predicta nuper Episcopus &
 omnes illi quorum statum ipse habuit in
 Manio predicto cum pertinenti unde, &c. pro
 tenentibus suis customariis predicta Messua-
 gii & quinque acra terre cum pertinenti
 fuerunt & a tempore cujus contrarii
 memoria hominum non existit hunc consue-
 ver' communiam pastur' in predicta peca
 pasture (vocat' Basingham Common) per
 omnibus equis vaccis & porcis suis
 super predictis Messuagio & quinque acra terre
 cum pertinenti levan' & cuban' quolibet An-
 no omni tempore Anni tanquam ad predicta
 Messuagium & quinque acra terre cum
 pertinenti spectant' & pertinent' quod predicta
 nuper Episcopus de Manio predicta cum
 pertinenti unde, &c. in forma predicta scilicet
 existens ad predictam Cur' suam Manii sui
 predicta tenet' apud Manium illud predicta.

Where one
 prescribes
 for Common
 appurtenant
 and does not
 say, Pro ave-
 riis levan',
 it's ill.

2 Saund. 325,
 &c.

Case.

die Veneris proximo ante predicta festum
 Sed Michis Archi Anno, (Ec.) supra-
 dicto p predicta D. W. adtunc Senescal-
 lum suum Cur' Manii predicta concessit
 prefat G. predicta Messuagium & quinque
 acr' terr' cum pertinentiis habend' sibi & here-
 dibus suis ad voluntatem Dñi secundum con-
 suetud' Manii predicta quod predicta G. vir-
 tute ejusdem concessionis in predicta Mes-
 suagium & quinque acr' terr' cum pertinentiis
 intravit & fuit & adhuc est inde seiscus
 in Dñico suo ut de feodo ad voluntatem
 Dñi secundum consuetud' Manii p. put p. p.
 G. p. h. & Parr' sua predicta superius sup-
 pon sed idem E. ulterius die quod ante
 predicta primum diem Maii Anno Regni
 dicti Dñi Regis nunc quinto supradicto
 necnon eodem primo die Maii ac a toto
 tempore cujus contrarii memoria ho-
 min' non existit quedam communis pa-
 stur' (vocat' Barningham Common) in Town
 Barningham predicta contigue adiacebat p.
 pecie pasture (vocat' Basingham Common)
 absq' aliqua separatione aut divisione
 cum sepibus aut aliis clausuris int'
 eandem pasturam (vocat' Barningham Com-
 mon) & predicta pasturam (vocat' Basingham
 Common) Quod predicta W. W. Ar' ante
 predicta primum diem Maii Anno Regni
 dicti Dñi Regis nunc quinto supradicto
 ac eodem primo die Maii fuit scit' de
 Manio de Town Barningham cum pertinentiis
 in Com predicta unde tñ predicta commu-
 nis pastur' (vocat' Barningham Common)
 qm unū Messuagiū unū Gardinū unū
 Pomariū & due acre & dimidium unius
 acr'

acc' & dimidium unius rode terre cum
 pertin' in C. in Com' p'dia' sunt & a tem-
 poze cujus contrarii memoria homin'
 non existit fuerunt parcell' in Dñico
 suo ut de feodo qđq' p'dia' Messuagiū
 Gardinum Pomarium & due Ace terre
 dimid' unius rod terre cum pertin' sunt
 & a tota tempore supradicto fuerunt te-
 nementa customar' p'dci Manerii de C.
 ac dimissa & dimissibilia per Copiam
 Rotloz Cur' p'dci Manerii de C. per
 Dñum Mañii illius vel p' Senescallum
 suum Cur' ejusdm Mañii p' tempore exi-
 sten' cuicunq' persone sive quibuscunq'
 personis illa capere volenti vel volenti-
 bus in feodo simplici aut alit' ad volun-
 tatem Dñi scdm consuetud' Maner' p'di
 p'dictusque W. W. de p'dca Manio de C.
 cum pertin' unde, &c. in forma p'dia'
 seit' existen' ante p'dia' primum diem
 Mañii Anno quinto supradicto scilicet ad
 Cur' ipsius W. W. Mañii sui p'dia' tenet'
 apud Mañium illud die Martis decimo
 octavo die Marcii Anno (&c.) p' copiam
 Rotlozum Cur' p'dia' Mañii de C. con-
 cemit eidm C. p'dia' Messuagium Gar-
 dinum Pomarium duas accras dimi-
 dium unius acc' & dimidium unius rode
 terre cum pertinen' hend' & tenend' eidm
 C. & hered' suis ad voluntatem Dñi
 scdm consuetud' p'dia' Mañii de C. vir-
 tute cujus concessionis idem C. ante
 p'dia' primum diem Mañii Anno quinto
 supradicto in eadm Messuagiū Gardi-
 nū Pomariū duas accras & dimid' uni-
 us acc' & dimid' unius rode terre eidm

Case.

pertinenū intravit & fuit & adhuc est
 inde scit in Dñico suo ut de feodo ad
 volūntatem Dñi scdm̄ consuetudinem
 pdict' Manii de C. Et idem C. ultius
 die qđ infra pdictum manium de C. ha-
 betur & a tempore cuius contrarii me-
 moria hominum non existit hebatur
 consuetudo qđ omnes & singuli tenen-
 dū customarii pdictorum Messuagii Gar-
 dini pomarii duarum acrarum & dimid'
 acr' & dimid' unius rode cum pertin'
 fuerunt & a tempore cuius contrarii
 memoria hominū non existit here con-
 sueber' communiam pasture in pdicta
 pastura (vocat' Barningham Common) cū
 vñbus averiis (vocat' Horse-beasts and
 Neat-beasts) sup eisdem Messuagio Gar-
 dino Pamaris duobus acr' dimidio uni-
 us acr' & dimid' unius rode terre cum
 pertin' leban' & cuban' quolibet anno
 omni tempore anni tanquam ad eadem
 messuag' gardin' pomarium duas acras
 dimid' unius acr' & dimid' unius rode
 terre cum ptin' spectan' & pertin' pđq'
 idem W. W. & omnes illi quorum statu
 idem W. her' & pđeo primo die Maii
 Anno quinto suprad' fuit in pđ Manio
 de C. a toto tempore supradicto fuerunt
 & here consueverunt pro tenentibus suis
 customariis pdictor' Messuagii gardini
 pomarii duarum acrar' dimid' unius
 acr' & dimid' unius rode tre cū pertinē
 tōiam pastur' in pđca pecia pasture vo-
 cat' Basingham Common) pro omnibus
 & om̄io averiis suis (vocat' Horse-beasts
 and Neat-beasts) super eisdem messuagio
 Gar-

gardino pomario duabus acr' dimidi
 unius acre & dimidi unius rode terre
 cu ptin leban & cuban quolibet anno
 omni tempore anni causa vicinagii Qd
 qd pda' nuper Episcopus & omnes pre-
 decessores sui & omnes illi quorum sta-
 tu idem nuper Episcopus fuit in pre-
 dicto messuagio & quinqz acr' ter' tm
 ptinen in Parr' pda' lupius spec a
 toto tempore supradicto in simili moda
 huezunt & here consueverunt coiam pa-
 stur' in pda' pastura (vocat' Barningham
 Common) p oibus & omniob averiis suis
 (vocat' Horse-beasts and Neat beasts) super
 eisdem messuagio & quinqz accris tre cu
 ptin leban & cuban quolibet Anno omni
 tempore Anni causa vicinagii, Et idem
 E. ultius die qu ipse antea pda' pri-
 mu diem Maii Ann' quinto supradicto
 de pda' Messuagio pomario duabus
 accris dimidi unius acr' & dimidi unius
 rode terre cu ptinen in forma pda'
 tunc tunc existen posuit equos vaccas &
 hoves suos in Parr' pda' lupius speci-
 ficat' tunc existen leban & cuban sup
 eisdem messuagio gardino pomario dua-
 bus accris dimidi unius acre & dimidi
 unius rode terre cu pertinen in pda'
 pastur' (vocat' Barningham Common) ad
 herbam in eadem pastura tunc crescen
 depascend utendo coia pda' ibm ac pda'
 equi vacce & hoves ipsius E. pda' pri-
 mo die Maii Anno Regni dicit Dni Re-
 gis nunc quinto supradicto a pda' pa-
 stura (vocat' Barningham Common) in p-
 dictam pccim pasture (vocat' Basingham
 Com-

*Causa vicina-
 gii mirter eins
 de ses avera.*

Case.

Common) intraver & herbam predictam tunc crescen' a predicto primo die Maii Anno quinto supradicto usq; predicto tricesimum diem Octob? tunc primu sequen' distis dieb? & vicibus continuando depasti fuerunt conculeaverunt & consumpser' utendo cōia pōca ibm causa vicinagii Que quidm intrō predictozum equozum hobiū & vaccarū ipsius Edmundi in pōcam peciam pasture (vocat' Basingham Common) ac depast' conculeatō & consumpō herbe pō ibm cum equis vaccis & bobus illi sunt eadmd posit' equorū vaccarū & bobium in pōcam peciam pastur' (vocat' Basingham Common) ac depast' conculeatō & consumpō herbe ibm cum predictis equis vaccis & bobus unde pōca' G. superius vsus eum se modo queritur, Et hoc parat' est verificare unde petit iudicium si pōca' G. actionem suam pōca' inde verlus eum here debeat, &c.

Repl.

Et pōca' G. quoad pōca' plitum pōca' Edmundi ad possessionem pōca' equorū vaccarū & bobium pōca' in pōcam peciam pastur' (vocat' Basingham Common) ac depast' conculeatōn' & consumpōn' herbe pōca' in eadmd cum equis bobus & vaccis pōca' superius in barram plitat' die qđ ipse p aliqua in eadmd plito prealleget' ab actione sua pō' inde habend' pcludi non debet, Quia Protestando qđ pōca' Cōis pasture (vocat' Barningham Common) in barra pōca' C. supius spec' non est pcell pōca' manū de Town Barningham pprotestandoq; etiam qđ intra idem manūm

Protestando.

Case.

mañium de Town Barningham nulla he-
 tur nec a tempore cuius contrarii me-
 moria hominū non existit hebatur talis
 consuetudo qđ omnes & singuli tenen' cu-
 sumarii pđictorum messuagii gardini po-
 marii duarū acraꝝ & dimidū unius acr'
 & dimid' unius rode terre cum pertinenđ
 fuerunt & a toto tempore cuius contrar'
 memoria hominum non existit habere
 consuever' cořiam pasture in pđict' pasu-
 ra (vocat' Barningham Common) cum om-
 nibus averjis suis (vocat' Horse-beasts
 and Neat-beasts) super eisđm messuagio
 gardino pomario duabus acr' dimid'
 unius acr' & dimid' unius rode terre cum
 ptinenđ spectanđ & pertinenđ ptestandoq;
 etiam quod pđict' cořis pasture (vocat'
 Barningham Common) pđict' pecie pasture
 (vocat' Basingham Common) non contigue
 adjacet put pđict' Edus supius allegabit
 p pñito dicit qđ pđict' E. pđicto pñimo
 die Maii Anno quinto supradicto de in-
 jur' sua pñpzia equos vaccas & bobes
 suos pđictos in pđictam peciam pasture
 (vocat' Basingham Common) posuit ac her-
 bam pđictam ibm tunc credeen' cum equis
 bobus & vaccis suis pđictis depast' fuit
 conculcavit & consumpsit depast' concul-
 caconem & consumpconem ill herbe pñe-
 dia' p tempus pñedictum in narracon' pñe-
 dia' superius mentionat' diversis diebus
 & vicibus continuando put ipse supius
 versus eum queritur, Absoꝝ hoc quod
 pđict' W. W. & omnes ille quoz statum
 idem W. her & pđict' pñimo die Maii
 Anno quinto supradicto habuit in pđict'
 mañio

*Travers de
 prescription al-
 leg' per le Def.*

Case.

mañio de Town Barningham a toto tem-
 pore cuius contrarii memoria hominū
 non existit fuerunt & hēre consueber
 p tenenū suis custumariis p̄dictorū
 messuagii gardini pomarii duarū acrarū
 & dimidū unius acr' & dimidū unius rode
 terre cū ptinenū cōiam pastur' in p̄s-
 dia' pecia pasture (vocat' Basingham
 Common) p̄o omnibus & omiōdū averiis
 suis (vocat' Horse-beasts and Neat-beasts)
 super eisdem messuagio gardino poma-
 rio duabus acris & dimidū unius acre
 & dimidū unius rode terr' cū ptinenū
 lebanū & cubanū qualibet anno omni tem-
 pore anni causa vicinagii put p̄dia' E.
 superius allegabit, Et hoc parat' est
 iustificare unde ex quo p̄dia' E. equorū
 vaccarū & hōbiū p̄dia' p̄sitionem ac
 depast' conculcatōd & consumptōd herbe
 p̄dia' cū equis hōbus & vaccis p̄dictis
 in p̄dicta pecia pasture (vocat' Basingham
 Common) supius cogn' idem G. petit
 iudiciū & dampna sua octōne tñsgr'
 illius sibi adjudicari, &c.

Rejoinder.

Et p̄dictus E. ut p̄ius dic' quod p̄
 III. & omnes ill' quorū statum idem W.
 hēt & p̄dicto p̄mo die Maii Anno quin-
 to sup̄radicto fuit in p̄dict' Mañio de
 Town Barningham a toto tempore cuius
 contrar' memoria homin' non existit ha-
 buerunt & habuere consueverunt p tenen'
 suis custumar' p̄dictorū messuagii gardini
 pomarii duar' acrar' & dimidū unius acr'
 & dimidū unius rode terre cū ptinen'
 cōiam pastur' in p̄dict' pecia pasture (vo-
 cat'

cat' Basingham Common (pro omnibus & omniōd' averiis suis (vocat' Horse-beasts and Neat-beasts) super eisdem messuagio gardino pomario duabus acc' & dimidiū unius acc' & dimidiū unius rode terre cum ptinen' levan' & cubam quolibet anno omni tempore anni causa vicinagii put ipse supius allegabit, Et de hoc pon se super priam, Et p'dict' G. s'lit' (Ec.) Vide Thompsl. 63. Co. Ent. 10.

Issue

ff. **E**t p'dict' Johan' per R. D. Attozū suum ven' & defend' vim & injuriam quando, (Ec.) Et quoad ponend' aliqua averia in p'dict' trescentas acras terre (vocat' Askerwell Common) pzet' quadragint' oves de ovibus p'dict' in Paroche p'dict' specificat' die qd' ipse non est inde Culpabilis, Et de hoc pon se sup priam & p'dict' T. inde s'lit', Et quoad ponend' pzed' quadringent' oves in pzedict' trescent' acras terre (vocat' Askerwell Common) supius fieri suppōit' Idem Johan' dicit qd' pzed' T. accōnem suam pzed' inde Usus eum here seu manutenere non debet quia die qd' diu ante tempus pzed' quo supponitur positōd' averioz' p'dict' supius fieri idem Johan' seit' fuisse & adhuc seit' existit de & in uno messuagio ducent' & quinquagint' acris terre prati & pasture cum prin' in Paroch' de Askerwell pzed' in D'nico suo ut de feodo, Idemq' Johan' & omnes al' quozum stat' idem Johan' modo het, Et pzed' tempore quo, Ec. habuit in tene-mentis pzed' cum pztin' a tempore cu-
jus

In Case.
For surchar-
ging a Com-
mon, the De-
fendant just-
ifies he is a
Commoner.

Cose.

ius contrarii memoria hominum non existit habuer' & usi fuer' & consuever' & debuer' habere p se tenentibus & firmariis suis testi p cum ptin coiam pasture p quadringent' obilibus sup tentum pdia' cum ptin leban' & cuban' in pdia' trescent' acris terre (vocat' Askerwell Common) quolibet Anno omni tempore anni tanq ad tentum pdia' cum ptin spectan' & pertinen' pdioz Johs de tentis pdia' cum ptin sic inde seit' existen', Idem Johes decimo quinto die Decemb' Anno quarto supradicto posuit pdia' quadringent' oves tunc leban' & cuban' sup' tenta pdia' in pdia' trescent' acris terre (vocat' Askerwell Common) ad herbam ibi tunc crescen' depascen' utend' coia sua pedia' ibi put ei bene licuit, Et hoc parat' est verificare, Unde petit Judiciu si pdictus C. actionem suam pdiam inde usus cum habere seu manutenere debeat (Ec.) Vide Hern. 208. Rob. Ent. 42. Qui proprietarius terre dedit licenc Def. imponere averia, Et travers prescription', 1 Brownl. 250. Defendant as Executor justifies plowing the Ground, and traverses the Plaintiff's Prescription. *Thomps.* 65. 2 *Mod.* Int. 155.

Defendant justifies Digging as Servant to L. &c. 2 *Mo.* Int. 252.

Defendant justifies by a Grant of Free Warren, by the Dean and Canons of *Windsor*, and confirmed by Act of Parliament. *Winch. Ent.* 77.

A Man

A Man may prescribe for Common, or other Profit or Easement, for himself and his Tenant. 1 *Saund.* 344.

☞ See more in *Tit. Replevin*, and *Tit. Trespass*.

Copyholders cannot prescribe against their Lord *omnino*, nor against any other, but only in the Name of their Lord. 2 *Saund.* 326.

And if Freeholders will prescribe, they ought to shew their Estates, and prescribe in the Name of Tenant in Fee *per un' Que Estate*.

A Commoner cannot prescribe to exclude his Lord. 1 *Vent.* 394.

In a Title of Common for Beasts levant and couchant, the Levancy and Couchancy is not traversable, *Idem* 385. Nor material among Commoners, 397.

Note, That generally in all Cases where a Man hath ancient Common of Pasture by Custom or Prescription, and any other do by Inclosure, Surcharge, Trespass of his Cattle, or the like, eat up, destroy, or spoil, the Grass so much that there is not sufficient left for the Feeding of his Cattle as formerly, so that he cannot have the Profit of it as he had, he may have an Action upon the Case; but not for a small Trespass, where there is notwithstanding sufficient of Feeding left. 4 *Co.* 9. 8. 79. 1 *Cro.* 355. 1 *Inst.* 56.

So if he have Estovers in the Wood of another by Prescription, and the Owner cut it down, and leaves not sufficient Estovers. 9 *Co.* 112.

Note, If one Commoner surcharge the Common, that the rest cannot have theirs
as

Case.

as they have been used to have it ; some hold that the rest of the Commoners may have this Action against him. *Stiles Rep.* 164. *Vide Noy's Rep.* 30.

The Variety of these Sort of Pleadings of Common, Custom, and Prescription, will be further explained in the Titles of *Replevin* and *Trespass*.

Negligence, &c.

*Pro negligē
custod' ignis.*

Bar.

*Qd' extraneus
ignotus ignem
imposuit domi-
bus adjacen-
tibus Quer'
Et travers'
negligen' cu-
stod' ignis.*

Traverse.

ff. **A**ctio non (Ec.) Quia dic qđ pdic-
to die (Ec.) superbenit quidam
extraneus ignotus & ignem quibusdā
domibus ipsius def. in pzed' villa de P.
pzed' domibus pzed' quer' contigue adja-
ceñt imposuit sicq; eedem domus combust'
fuer' ad ignes ill' ab inde p ventum flā-
tem versus pzed' domus pzedicta quer'
supportat' & super eadem domus de-
scenden domos illas p infortunium com-
buser' Absq; hoc qđ idem def' ignem suum
tam negligent' custodivit qđ p defectū
debitē custod' ignis pzed' def. pzed' domus
pzed' quer' combust' fuer' put pzed' quer'
superius versus eum queritur Et hoc parat'
est verificare Unde pet' iudicium si pze-
dicta quer' actionem suam pzed' inde sūm
eum habere debeat, &c.

Vide 1 Bro. Ent. 29.

*Qd' bona non
fuer' combust'
in defectu cu-
stod' ignis.*

ff. **E**t pzed' D. p (Ec) Attorñ suum
ven, (Ec.) Et dic qđ bona & ca-
talla pzed' ac domus pzedicta non com-
busta fuerunt nec aliqua inde parcelle
combust' fuit in defectū debitē custodie
ignis

ignis ipſus D. modo & forma put pre-
dicta quer' p h2o & Parr' ſua pred' ſuppon
Et de hoc, (Ec.)

Case.

Vide Raſt. Ent. 8.

Aliter.

Quando, (Ec.) Et dic qđ ipſe ignem ſuum pred' ſalvo & ſecure cuſtodivit
Alboq; hoc qđ ipſe ignem illum tam neg-
ligenter & improvide cuſtodivit qđ in
deſcđ debite cuſtodie ignis illius pred'
tria meſſuagia pred' P. combuſta fue-
runt put pred' P. p h2o & Parr' ſua pre-
dicta ſupius ſuppon Et hoc parat' eſt ve-
rificare, Ec.

Bar que il
gard de fue,
Ec.

Et pred' P. dic qđ predicta C. ignem
ſuū tam negligent' & improvide cuſta-
divit qđ in deſcđ debite cuſtodie ignis
illius pred' tria meſſuagia predicta P.
combusta fuerunt put ipſe p h2o & Parr'
ſua pred' ſupius ſuppon Et hoc perit qđ
inquiratur per priam, (Ec.)

Repl.

Iſſue ſur negli-
gent' garder
del fue.

Vide Raſt. Ent. 8. Hern 176. 246. Aſt. 13, 56.
Qđ Def' non combuſſer' molendina modo
& forma. Rob. Ent. 65.

Note, It's ſaid, That if a ſudden Fire hap-
pen by Accident in another Houſe near to
mine, whereby my Houſe is burnt alſo, I can-
not have an Action for this; but if it be by
any Negligence of him, his Wife, Servant,
Children, or Hoſtler, I may.

So if the Fire be by one that comes into his
Houſe or Hoſtery by his Leave or Know-
ledge: But if any come againſt his Will,
or

Case.

or unknown to him, by whose Means the House is burnt, and thereby my House also, I may not have this Action against him, 42 Aff. p. 8. Action, &c. 43. 2 H. 4. 18. Action 25. 31 H. 3. 6. and especially if it be not done wilfully.

So if a Man shoot at a Fowl standing in his own House, and thereby fire his own House, and mine also near to it, I may have this Action against him. 1 Cro. 10.

¶ Vide more in Tit. Waste.

Bar per Inn-keeper.

Bar.

Protestando
qd' bona non
fuer' poss' in
hospitio.

Action' non, Quia protestando qd' nulla humod' bona & catalla fuer' possit' sine hospirat' in hospitio ipsius C. put p' h' & Parr' p'dia' supius supponitur p' plito dicit qd' bona & catalla in hospitio ipsius C. non fuer' p' malefactoris pred' capta & asportat' put p' predia' S. p' h' & Parr' sua predia' superius supponitur, Et de hoc, &c.

Vide Rast. Ent. 404. Co. Ent. 347. Ast. 48.

Bar.

Qd' delibera-
vit bogettam
per servien'
Quar'.

Actio non) Quia p'testando qd' non fuer' Centum solidi in bogetta p'dia' put p'dia' W. supius versus eum narrabit p' plito die qd' post tempus dia' deliberationis bogette pred' per ipsum W. fieri supponit' scil't (tal' die & anno, &c.) idem C. per quendam J. tunc servien' ipsius W. apud B. pred' in hospitio p' predia' deliberavit bogettam illam p'fat' W. put illam de eodem W. recepit Absq' hoc qd' bogetta illa capt' & asportat' fuit per

et defendit ipsius T. & servient suorum put
pred' M. superius vsus eum queritur Et
hoc parat' est verificare Unde petit judi-
cium si, (Ec.)

Vide Rast. Ent. 404, 405. 1 Brownl. 196.

(Precludi non) Quia dicit quod bogetta Repl. & Issue
pred' cum predia' centum solid' capi' & as-
portat' fuit p' defendit ipsius T. & servient'
suorum put ipse superius versus eundem T.
e modo Queritur Et hoc petit, (Ec.)

Et p'dia' H. p. . . . Attor' suu' ven'
& defendit vim & injur' quando, Ec.
Et dicit quod p'dia' G. actionem suam p'dia'
inde versus eum habere seu manutenere
non debet Quia protestando quod Malefac-
tores pred' bursam predia' cum trigin-
ta libris de denar' pred' G. in pecunia
numerat' in eadem bursa content' apud
R. pred' in Hospitio predia' H. invent' ho-
spitat' in defectu ipsius H. & servient'
suorum predia' non ceper' & asportaber' put
predia' G. p' h'ed' Rar' sua pred' superius
versus eum supponit' p' p'lito dicit quod eo-
dem tempore Transgr' pred' fieri supponit'
pred' G. ven' ad Mansionem predia' H.
apud R. pred' ipsum rogans & deside-
rans ut secum in domo sua hospitari &
pnoctari potuisset & idem H. petitioni
ejus acquiescens ipsum G. abtunc & ibi
gratanter admittens duxit ipsum in
quandam Cameram in eadem domo &
clavem ad serband' ostium ejusdem Cam'
p' salvo custod' honor' ejusdem G. ibi
existen' eid' G. tradidit & ipsum G. ad-
tunc

Bar.
Per Hostler.

Protestand.

Pur plea que
il lodge le Plt'
gratis & que
les Des. ne
teigne Com-
mon Inn.

Case.

tunc & ibi in eadem Camera hospitari permittit Absq; hoc qđ idem H. fuit hospitator tenens eod hospitium ad hospitand' homines per partes illas transcurrentes in forma qua pđia' G. superius vsus cum queritur Et hoc, (Ec.) Unde petit Iudicium si, (Ec.)

Repl.

*Que le Def.
teigne Com-
mon Inn.*

Et pđed' G. (Ec.) precludi non debet Quia die qđ pđia' H. fuit hospitator tenens eod hospitium ad hospitand' homines per partes pđed' transcurrentes in forma qua idem G. superius versus eum queritur Et hoc per' qđ inquiratur per priam, Ec.

Vide Rast. Ent. 405. & Ast. 48. 2 Mod. Intr. 147.

*Case envers
Hostler pur
male garder
Chival, &c.
Def. plede qđ
le Plt' request
luy a mitter
son Chival al
Pasture.*

Et pđia' G. per . . Attozñ suum ven' & defend' viñ & injuriam quando, Ec. Et die qđ pđia' H. actionem suam pđed' inde vsus cum habere non debet quia die qđ pđed' H. pđed' tempore in Narr' pđed' specificat' hospitat' fuit in hospitio ipsius G. & adtunc & ibi requisivit pđia' G. qđ idem G. poneret spadonem pđed' in aliquo Clo pasture ipsius G. ad herbam in eodem Clo exigent' depascend' per qđ idem G. adtunc ad eandm requisitionem ipsius H. sic fact' posuit spadonem pđed' in quodm Clo pasture ipsius G. vocat', (Ec.) ad herbam in eodm depascend' & ibi depasturand' qui quidm spado in Clo illo herbam in eodm crescent' fuit depascens & ibi depasturans quousq; quidm malefactoris die & anno in Narratione pđia' su-

Case.

superius spec p̄dia' spadonem p̄dia' H. ex
Cto illo ceperunt & abduxerunt Ables
hoc qđ spado p̄dia' in hospitio p̄dco exi-
ten' capt' & abduca' fuit ab eodem hospi-
tio in defeau ipsius G. & serbientiu' suo-
ru' p̄out p̄dia' H. superius versus eum
queritur Et hoc parat' est verificare unde
pet' iudiciu' si p̄dia' H. actionem suam
p̄dia' inde versus eum habere debeat, &c.

Et p̄red' H. dic qđ ip̄ p aliqua, (&c.)
pcludi non debet Quia die qđ ip̄ p̄dco
decimo die Maii Anno, (&c.) sup̄p̄dco
apud G. p̄red' delibabit p̄fat' G. spa-
donem p̄redia' in stabulo infra hospitiu'
p̄red' custodiend' & pascend' qđq̄ quidam
malefactores tempore in Narratione p̄-
dicta superius spec spadonem illum sub
custodia ipsius G. & serbient' suorum ce-
perunt & abduxerunt xut ip̄ superius
narrando allegavit Ables hoc qđ idem
H. requisivit ipum. G. qđ idem G. po-
neret spadonem p̄redia' in aliquo Cto
pasture ipsius G. ad herbam in eodem
crescend' depascend' put p̄dia' G. superius
allegavit Et hoc parat' est verificare
Unde petit iudiciu' & dampna sua oc-
cione p̄missa sibi adjudicari, (&c.)

Et p̄red' G. ut prius die q̄ p̄redia' H.
requisivit ipum G. qđ idem G. poneret
spadonem p̄dco in aliquo Cto pasture
ipsius G. ad herbam ipsius G. in eodem
crescend' depascend' put ip̄ superius alle-
gavit Et de hoc pon' se super Priam,
(&c.) Et p̄red' H. silit' Ideo P̄cept' est
Dic qđ venire fac' hic. (&c.)

Vide Hern. 250. Rob. Ent. —

D d 2

Note,

Repl.
*Que Melefac-
tors esloign son
Cheval hors del
Linn en default
del Des. & ses
Servants, &c.*

*Issue sur Re-
quest.*

Case.

Note, As to maintaining an Action against an Inn-keeper for losing of Goods, &c.

It must be a common Inn; also an Inn in London is so taken. *Poph.* 178.

He to be charged must be a common Host or Inn-keeper: And if he be but newly set up his Trade, he is chargeable. 8 Co. 32. *Dyer* 158, 266.

The Plaintiff must make it appear the Goods were brought into the Inn or House; and by 8 Co. 31. it must be in his Passage and Travel through the Country. See also *Bendloe* 173. But *vide Noy's Rep.* 79. and *Latch's Rep.* 126, 127. 'tis good enough to say he lay there only.

The Goods must be the Goods of the Guest, or of his Master, and either of them may have his Action. *Poph.* 179. *Bendl.* 173. and some say, he shall be accounted a Guest but for Three Days, and not after. *Vide Latch.* 81. *Gullem's Case.*

But if he board or sojourn in an Inn only, or stay a Quarter of a Year there, he will not be accounted a Guest capable of this Action. *Poph.* 179. *Hetl.* 49. *Yelv.* 162. *Bendl.* 18. *Dyer* 158. *Latch* 126, 127.

The Inn-keeper is not obliged to keep the Things out of his Inn or House: Therefore if the Guest bid him put his Horse to Grass, and he be lost, the Guest must bear it; but if he put him out on his own Head, he shall bear the Loss. 8 Co. 32.

It must be lost by Negligence, and in Default of the Host or his Servants; it must therefore be shew'd that the Goods came to his Hands. *Idem.* 2

The

The Goods, it's said, must be lost while the Owner is there; for if one leave his dead Goods with the Inn-keeper, and do not lie there himself, and the Goods are stolen, the Host shall not answer for them. *Bendl.*

173.

Yet if it be a Horse or living Thing that is left, by which the Inn-keeper doth gain, he shall answer for it; and likely for dead Things, if he make any special Promise, especially if the Guest go out in the Morning and come again at Night. 8 Co. 32. 1 *Brownl.* 254. 2 *Cro.* 189. *Noy* 126. *Latch.* 127.

Yet see a Precedent in *Coke's Entries*, p. 345. which sets forth, That he is to keep all the Goods that are left with him, *ita qđ dampnū non eveniat hospitibus nec aliquibus aliis, &c.*

If an Inn-keeper refuse to lodge a Traveller, or herbage his Horse, he may have an Action, (unless he have good Reason, as that his House is full, or that the Traveller had the Plague, or the like) and a Constable of the Town may compel him. 5 *Ed.* 4. 2. 14 *H.* 7. 22. *Kelw.* 50, 158.

But 'tis otherwise, if the Traveller refuse to lie there himself, *Pasch.* 7 *fac. B. R. Walbrook's* Case: Or after Refusal says, he will make a Shift amongst them, and comes in, and so is robb'd, (unless the Cause of the Refusal was false) *Dy.* 158. So if he come in and lodge with some of the Guests, without Leave of the Host, or any of his Servants.

Case,

If the Inn keeper bids the Guest at coming put his Goods in such a Place under Lock, and he will warrant them, otherwise not, and the Guest suffer them to lie in an outer Court, and there they be lost, the Inn-keeper shall be excused. *Dyer* 266.

That the Inn-keeper, when the Guest came to the House, was sick, and by Occasion thereof *de non sane memory*. 1 *Cro* 622.

But it will be no Excuse for him to say, That his Guest did not acquaint him with his Goods what they were, 42 *Ed* 3. 11. Nor, that he delivered the Key of the Chamber to the Guest himself; or that he knew not the Felons. 22 *H.* 6. 38. *a.*

Yet, 8 *Co.* 33. he shall not be accountable for any Wrong done to the Person of his Guest. In this Action the Writ is general, but the Count is special. 8 *Co.* 33. *Stiles Rep.* 379.

Def. plede que il esteant un common Carrier fuit robb del' Cloth en le Count al son Inn, Et tra-verse son Pro-mise a Carrier le Cloth safe-ment, &c.

Et predictus Ricus per—Attorn^{us} suum die qđ (Acço non) Quia die qđ ipse est & predictus (tli die & anno) supradicta fuit Cōis Tabellarius (vocat^{us} a Carrier) p quibuscunq; rebus alicujus persone a W. predictus usq; Civitatem predictam carriand^{um} qđq; predictus R. die & anno supradictis apud W. predictus requisivit ipm Ricum ad carriand^{um} pannum predictum usq; ad predictam Civitatem London^{em} virtute cujus requisitionis idem Ricus pannum illum usq; Civitatem predictam carriand^{um} & infra tempus predictum prefat^{us} T. S. ad usum predictum R. ibm deliberand^{um} ut Cōis Tabellarius [vocat^{us} a Carrier de pfat^{us} R. apud W.

W. predict' recepit & eundem pannum in Carecta ipsius Ric' int' alios pannos & res usq; Civitatem p'dicam per ipsum Ricund ut Cois Tabellarius [vocat' a Carrier] carri-nd' posuit & carectam illam cum humod' pannis & rebus adtunc & ibi onavit Ac qd quidam C. D. (tli die & anno) apud H. in Com' Hunc' domo cujusdam J. G. in qua idem Ricus cum Carecta sua cum pannis & rebus p'dictis in forma p'dict' onat' in ite sua a W. pred' usq; Civitatem London' p'dict' moram fecit & hospitavit fecit & intrabit Et pannum p'dict' int' alios pannos in carecta sua p'dicta sic onat' & in eadem domo existen' contra voluntatem ipsius Ric' felonice cepit & asportavit Absq; hoc qd ipd' promisit & sup se assumpsit ad carriand' pannum illum salvo & secure a Villa de W. p'dicam usq; Civitatem London' & ibi pannum illum p'fear' C. S. ad usum p'dict' R. infra tempus p'dict' deliband' put p'dict' R. per h'ed & Narrationem sua p'dicta supius suppon' Et hoc. (Ec.) Unde petit iudiciu' (si acco, Ec.) Et Quer' manutinet h'ed Ideo rit. (Ec.)

Vide Rob. Entr. 30. Bro. Red. 16. M' Harr' de bonis p'dicta' p' Common Waterman Bar quod Cimba cum bonis in Cista per magnam tempestat' submersa fuit absq; aliqua negligenc' Def. & transvers' qd amiss' fuer' pro defctu salve custod. Cl. Ass. 99. 2 Mod. Intr. 95. vid. 3. 38. Bro. Red. 101. Protest. &c. pro plito quod bona combusti' fuer' in hospicio super vi-

Case.

am permissione divina & non per negligentem Demurr' inde spial. Winch. Ent. 29.

Common Carrier.

THE Plaintiff declares in an Action upon the Case, That whereas the Defendant was a common Bargeman, and used to carry for Hire from *London* to *Milton*, and other Places in *Kent*, that he delivered unto him a Portmaneau and 30 *l.* therein to carry, and gave unto him Two Pence for the Carriage, and that the Defendant tam negligentem custodivit that he lost it. The Defendant confessing the Receipt pleads, That he was a Common Bargeman, but fearing to carry it, delivered it to *J. D.* to carry, and that he gave Notice thereof to the Plaintiff, and he agreed thereto, and discharged him of the Carriage. The Plaintiff traverses that he did not discharge him: Defendant demurs, and adjudged for the Plaintiff; for the Delivery by his Assent is not material, but the only Matter traversable is the Discharge, which is issuable. Afterwards an Error being brought, it was assigned, That this Action lies not against a common Bargeman without Special Promise. But all the Justices and Barons held, That it as well lies as against a common Carrier upon the Land, and also that the Traverse was good, and Judgment was affirmed. *Vide* 2 *Cro.* 330. *Rich.* and *Kneeland.*

And Note, that it is held, That if a Carrier take my Goods to carry and wilfully mar them, or negligently lose them, or suffer them to be lost or spoil'd, I may have an
Action

Action on the Case against him. *Hob.* 106.
Noy's Rep. 114.

Case.

As if he breaks or spoils my Pots, Glasses,
&c. 2 *H.* 7. 11. *Lib. Intr. D.* 2.

So if he overloadeth a Horse, and it fall into the Water, or drives by Night, or out of the Way, and is robb'd.

And tho' the Goods be delivered to his Servant; yet if it be his common and known Servant, and one that taketh in Goods for him to carry, the Master will be chargeable. *Pasch.* 9 *Fac. Wornhall* and *Bradshaw*.

Qu' quer' non delibavit Def. Cistam cum denat'. Rast. Ent. 9.

And tho' he be a Carrier that is newly set up, or he carry for some Persons only, (if he carry for Money) 'tis actionable.

But a Carrier by a Special Agreement, as when he undertakes the Carriage with this Caution, Not to answer them if they be lost; he shall not be chargeable.

So if there be no Default in him in the Carriage, and the Damage happen by the Act of God, unless he has made a Special Promise, and there is a good Consideration to engage him in the Case, it seems he is not to be charged. *Doct. & Stud.* 38, 139. *Fitzh.* 14, 15.

Also, if one that is not a common Carrier undertake the Carriage of any Thing, and has no Wages promised him for it, this it's said is but *nudum pactum*, and not actionable. 3 *H.* 6. 36. *Reg.* 110.

Again, as to a Ferry-man, if he undertake to carry me over the Water, and doth it not, I may have this Action, and that without any Consideration, for his Pay is certain. 22 *Ass.* 41.
And

Case.

And so it now seems of Carriers, for their Price and Pay generally is settled.

If a Ferry-man undertake to carry any Thing for me over the Water, and by his Default it taketh Hurt, or is spoil'd in or after the Carriage, while in his Custody; I may have this Action against him.

This Action also lieth against a Ferry-man that surchargeth his Boat, by which my Horse is drown'd. 22 *Aff.* 41. But if the Danger accrue only by the Act of God, as by Tempest, or the like, without any Default of the Ferry-man, no Action will lie for this. 12 *Co.* 63.

*Non Rasit
barbam.*

E C pred' D. per — Attoznd suum
o ben' & defend' vim & injur' quan-
o, (Ec.) Et dic qd ipse non rasit bar-
bam ipsius G. cum novacula immunda
& insalubri modo & forma quibus idem
G. p h're & Parr' sua pred' superius
sus e'd queritur Et de hoc pon' se super-
p'iam Et p'dic' G. alit', (Ec.) Jo, Ec.
Vide Rasit. Ent. 2.

Note, That if a Barber shave one with an unwholsome Razor, so that his Face is thereby hurt; or if he cut his Face with the Razor, the Party may have his Action on the Case. F. N. B. 94 7 H. 6. 5. *Old Book of Entries* 2.

*Ad accon' pro
lat' per Chirur'
pro curacon'
fractur' &
vulneris.*

A ction' non, (Ec.) Quia dic qd bene
& verum est qd predit' P. curam
fractur' & vulneris p'd super se assumpsit
put idem P. in Parr' sua predic' su-
perius suppon' sed idem C. ulterius & dic
qd

& p̄dict' P. a p̄dict' die, (Ec.) usq; p̄e-
 dictum diem, (Ec.) curam fractur' & vul-
 neris p̄ed' tam negligenc' & inartifi-
 cialit' attendit & tractabit qđ fractur' &
 vulnus p̄ed' ob negligenc' ipsius P. in
 a parte hitam & p̄ inartificiofam admi-
 nistracōn' medicament' emplastr' & phar-
 mac' ad fractōn' & vulnus p̄ed' multi-
 plicat' infest' devenit & p̄dicta' P. die,
 (Ec.) fractur' & vulnus p̄dicta' non cura-
 vit rōne cuius postea scilicet p̄dicta' die
 (Ec.) apud P. p̄dicta' quedam communi-
 tate hita & mota fuisset inter ipsos P. &
 E. de & concernen' curation' fractur' &
 vulneris p̄ed' Et super communicacōn'
 ill' p̄ed' P. eidem E. adtunc & ibm as-
 seruit & dixit qđ ipse idem P. aliquod
 amplius erga curacōn' fract' & vulneris
 p̄ed' qm̄ ipse idem P. antea fecisset non
 faceret Et qđ p̄ed' E. ad al' Chirurgū
 p̄ curacōn' fractur' & vulneris p̄ed' ad-
 esset super quo idem E. quinquagint' so-
 lid' legis monete Angl' eidem P. tam p̄
 arte & labore suis in ea parte hit' qm̄ p̄
 administ' medic' emplastr' & pharmac'
 & al' humod' necessar' ad fract' & vulnus
 p̄dicta' adtunc & ibm solvit quos quidē
 quinquagint' solid' idem P. de p̄fat' E.
 adtunc & ibm acceptavit Absq; doc qđ
 p̄ed' P. p̄o arte labore & curation' fract'
 & vulneris p̄ed' ult' qm̄ p̄dicta' quinquag-
 int' solid' rōnabiliter meruit Et hoc. (Ec.)
 Vide Bro. Red. 92.

Case.

Bar.

Qd' Quer'
 neglexit curam
 & dixit qđ
 non faceret ul-
 terius quam
 fecisset. Et qđ
 Def. solvit
 50 s. erga cu-
 racōn' quos
 quer' accepta-
 vit Absq; hoc
 qđ Quer' me-
 ruit ultra.

Traverse ul-
 tra.

Note;

Case.

Note, That if a Physician or Chirurgion undertake a Cure, and neglect it, or apply contrary Medicines by himself or Servants, an Action of the Case will lie against him. *Reg. Orig.* 105. 19 *H.* 6. 49. *Plow.* 305. 2 *Bulst.* 333.

Versus Def.
quia tam e-
normiter equi-
tavit Equum
quer' qd' in-
terit.

Bar.

Qd' Equus
fuit in variis
infirmis
temp' libera-
tionis & tra-
vers' quod
enormiter e-
quitavit.

Repl.

Qd' Def. enor-
miter equita-
vit & exit
superinde.

Actio non, Quia die qd' Equus p'dict' tempore liberationis illius fuit in variis infirmitatibus videlicet Glandiis & collapsus unde ad laborand' impotens extitit p' quod idem Equus occasione infirmitatum illar' interit. Absq' hoc qd' idem A. Equum p'dict' tam celeriter & enormiter equitavit qd' Equus ill' occasione equitationis illius interit Et hoc paratus est verificare unde petit iudicium si p'dict' C. actionem suam p'dict' versus eum habere debeat, &c.

Et p'dict' C. die qd' ipse p' aliqua palle-
gat' ab actione sua p'dicta hend' pcludi
non debet quia die qd' p'dict' A. Equum
p'dictum tam celeriter & enormiter equi-
tabit quod Equus ille interit prout
idem C. superius versus eum queritur
Et hoc petit qd' inquireatur p' p'iam Et
p'dict' A. sitit' No' p'cept' est Dic' qd' Ve-
nire fac' hic in Orab' Purificacon' B'ed
Marie Virginis rii. &c. per quos, &c.
Et qui nec, &c. Ad Recogit', &c. Quia
tm, &c. Vide 1 Bro. 40. Rob. Ent. 51.
Hern. 101.

Note, That if one for hire borrows my Horse
to ride to London, and he rides him further,

or rides him out of the Way, or forwards and backwards, and forwards again in and upon the right Way, in all these Cases I may have an Action against him, especially if the Horse be hurt thereby; so if the Borrower ride him an excessive Pace, so as to hurt him, altho' he hath ridden him no farther than was agreed but not if he makes him weary only. 12 Ed. 4. 813. 8 Co. 146. Doct. & Stud. 128, 129.

So if he put my Horse borrowed into an old rotten House, and the House fall down and kill him, or if he neglect to take Care of him, or suffer him to be abused, I may have an Action; but otherwise if he die suddenly, and without his Default. 1 Brownl. pag. 8, 9, 17. 1 Cro. 14. 4 Ed. 3. 36.

Actio non, &c. Quia dic' qd' ipse be-
ne & competenter ferravit Equum
predictum Absq' hoc qd' ipse fixit clavu'
in unum pedem Equi predict' put' predict'
Quer' superius Usus eum, queritur Et hoc
parat' est verificare Unde, (&c.)

Et pred' Quer' dic' qd' ipse p aliqua p
pred' Def. superius pfitando allegat' (pre-
cludi non) quia dic' qd' pred' Def. fixit
clavum in unum pedem Equi predict' in
forma qua idem Quer' superius versus
eum queritur Et de hoc pon' se super
priam Et pred' Def. alit' Ad precept'
est Dic' quod Venire fac' hic in Orab Pu-
rificationis Beate Marie Virginis xii,
&c. per quos, &c. Et qui nec, &c. Ad
recogn', &c. Quia tam, &c.

Ad Action'
versus ferro-
rem, &c.

Bar.

Qd' def. com-
petenter fer-
ravit Equum
& travers'
fixacon' clavi.

Repl.

Qd' def. fixit
clavum in pe-
dem Equi. Et
exit' superinde

Vide

Case.

Vide 1 Bro. 31. *Quod servabit Equum quer' bene & competenter Et traverse negligenc'. Rast. Ent. 3.*

Note, That if a Farrier undertake the Cure of my Horse, or a Smith the Shooing of my Horse, and doth it not well, an Action on the Case will lie against him. *Bro. Action 24. 19 H. 6. 47.*

And if he cly my Horse in the Shooing of him so that I lose the Use of him, or my Servant is hinder'd in riding about my Business; and this, though there be no Agreement, Warranty or Wages promised or given, and 'tis all one whether the Horse was brought by my Self or Servant. *46 Edw. 3. 19. Action, &c. 35. Fitz. 94. Reg. Orig. 106. A. 2 Bulstr. 334.*

Also if he refuse to shoe my Horse, and has Necessaries, and I tender his Payment, an Action lies. *14 H. 6. 18.*

Traverse
Negligence
in Planting.

Actio non Quia dic' qd ipd plantas pred' in fossato pred' bene & sufficienter posuit & plantabit Absq' hoc qd ipd plantas pred' tam negligenter & improvide posuit & plantabit qd plante ill' corrupte & mortue debener' put p'dict' H. p Breve & Parr' sua pred' superius suppon' Et hoc paratus est verificare Unde petit iudicium si, (&c.)

Repl.

Precludi non, Quia dicit qd p'dict' A. plantas pred' in fossato pred' tam negligenter & improvide posuit & plantabit qd plante pred' corrupte & mortue debener'

debener' prout idem H. per Breve & Narr'
 sua pred' superius suppon' Et hoc petit
 qd inquiratur per Patriam, (Ec.) Vide
 1 Bro. 73. Rast. Ent. 13.

Note, An Action of the Case lieth against any
 Workman, that being retain'd to do my Work,
 doth it amiss.

Or against my Servant that refuseth or
 omitteth to do the Work of his Place, where-
 by I have Damage; as,

Against a { Bailiff,
 Butler,
 Plowman,
 Shepherd,

and the like, too many here to enumerate.

Vide 2 H. 7. 11. 3 H. 6. 36. B. 5 Co. 13, 14.
 18 Edw. 4. 20. 27. Bro. 99. 1 Cro. 777, 784.
 Reg. Orig. 101.

Rescue and Escape.

ET p'dia' C. p. W. C. Atroznd suum *Sur Escape.*
 ven' & defend' vim & injur' quan-
 do, Ec. Et dic' quod p'dia' S. actionem
 suam p'dia' versus eum habere non debet
 quia protestando qd p'dia' Breve dia'
 Und Regis de capias ad computand'
 versus p'd' R. p. p'fat' R. non fuit pro-
 secut' nec eidem C. delibatum put p'd'
 R. superius allegavit p. p'lito idem C.
 die qd ipse non cepit & arrestabit p'dia'
 R. put p'd' R. superius s'iliter allega-
 vit Et de hoc pon' se super p'iam Et
 p'dia' R. s'ilu', Ec. Ito p'cept' est Dic'
 qd Venire fac' hic a die pasche in quin-
 que

Case.

que septianas duodecim, &c. per quos,
(&c.) Et qui nec, (&c.) Ad recogn', (&c.)
Quia tam, (&c.)

Vide Ast. 14. Non pmissit ire ad largum.
Vide 5 Co. 89. Cl. Aff. 83.

As to the Action for an Escape and Rescue, it is to be known, that when a Man is taken upon a mean Process, as *Uatitat* or *Capias*, and another Man rescue him, an Action of the Case lies against the Rescuer for Debt and Damages; but 'tis said not against the Sheriff, because the Sheriff may plead the Rescue, and that he made a Return of the Rescuers; so that the Plaintiff may have his Action against them.

But if it were after Execution, or upon a *Capias Utlagatum*, he that made the Arrest and suffered the Escape is liable, and he may have his Counter-Remedy against the Rescuers.

And if the Sheriff upon Arrest shall bring his Prisoner into Gaol, and thence suffer him to escape, an Action on the Case will lie against him. See 1 Cro. 33, 77. 2 Cro. 289, 360, 419. Popb. 189. 3 Bul. 198. Dyer 212, 241.

See after concerning the Pleadings.

And Note, That if any Sheriff or other Officer of any Court that is employed to do any Thing for another, shall do it deceitfully and falsly to his Special Damage, he may have an Action on the Case. F. N. B. 95. 6 Co. 9. 1 Cro. 175. Dyer 355. 9 Co. 32.

Case.

Sur Case
against a She-
riff for an El-
cape. The
Defendant
pleads, That
the Justices
of the Peace
in their
Quarter-Ses-
sions made a
Habeas Corpus
to bring the
Party arrest-
ed before
them, and
that being
returned the
said Justices
discharged
him.

Et p̄dica' f. — p Attorn suum ben
& defend' vim & injur' quando, &c.
& dic' qđ p̄dica' W. accōn suam p̄dica'
inde versus eum here seu manutene-
re non debet quia p̄testando qđ p̄fata C.
non indebitat' fuisset eidm' W. in p̄dica'
octogint' Libris in Parr' p̄dica' superius
mencōnat' nec aliqua inde parcelle put p̄
W. p Parr' ille superius suppon' p p̄lito
idem f. dic' qđ bene & verū est qđ p̄dica'
W. p̄secut' fuisset extra Cur' dcd Dñi
Regis scdm consuetud' ejusdem Cur' p̄
Breve dcd Dñi Regis de alias Capias
versus p̄dica' C. eidm' f. direx' quodq̄
p Breve illud p̄cept' fuit eidm' f. qđ ca-
pt p̄dica' C. si, &c. Et eum salvo, &c.
Ita qđ feret corpus ejus coram dco
Dño Rege apud Westm p̄dica' die Lune
prox' post Crū Ascencōnis Dñi ad re-
spondend' p̄lat' W. de p̄lito Cālgre' p̄dica'
qđq̄ p̄dica' W. Breve il p̄fata' f. in forma
juris exequend' deliberabit qđque idē f.
virtute Brevis p̄dica' cepit & arrestabit
p̄dica' C. & ipm in custod' sua ad sextam
p̄lat' W. habuit & detinuit quousque idē
f. postea & ante retozū ejusdm Brevis
& ante evasōn' p̄dica' in Parr' p̄dica' su-
perius fieri suppoie scilicet decimo die
Aprilis Anno Regni dcd Dñi Regis
nunc septimo apud N. in Com' Nott' re-
cepit quoddm Breve dcd Dñi Regis de
habendo Corpus ejus cujus tenoz sequi-
tur in hec verba Willus tertius Dei
Gra Angl Rex Franc & Hibnie Rex
Fidei Defensor, &c. Dic' Nott' salm
E e Osters

Case.

Offens' est Nobis ex parte T. G. qđ cum ipđ & quilibet ligens nr' in veniend' vers' sus aliqui' Cur' nr' ad aliquod plicm' vel Breve psequend' vel defend' ibm morand' & exinde r'us negotia sua ppz' redend' sub p'otec'one nra esse debeant & consuever' juxta Libertat' & Privileg' Cur' p'dia' a tempore quo non extat memoria n'it' & approbat' in eisdem quidam tamen malevoli machinan' ipm' T. multiplic' p'gravare eundm' T. ut fuit in veniendo vers'us Cur' nram coram Custod' Pacis n'ost' ac Justic' h'ris ad divers' felon' t'nsgr' & al' malefacta in Com' tuo ad Gen'at' Session' Pacis n're apud R. in Com' tuo tenend' hoc instante die perpetrat' audiend' & terminand' assign' tmd' p' nob' qm' p' seipso ad psequend' vers'us H. R. & al' p' divers' t'nsgr' & offens' per ipsos contra nos com'iss' & perpetrat' parte vel Ministros v'ros arrestari & in Prisona nra sub custod' v'ra detineri p'curaver' minus jussu in ipsius T. dampnum non modicm' & gravamen ac contra libertat' & privileg' p'dia' unde nob' supplicabit idem T. sibi remediū in hac parte adhiberi Nos igitur volen' eidm' T. fieri qđ est justū & consentaneum rōni & libertat' & privileg' p'dia' inviolabiliter observari tibi p'cipimus qđ si p'dia' T. in Prisona nra sub Custod' tuo detent' existit tunc ipm' T. quocumque n'ite censeatur in eadē unacum die & causa cap'ionis & detencionis suaz' h'as coram p'fat' Custod' Pacis n're & Justic' p'dia' apud R. p'dia' hoc instante die ut iidm' Custod' Pacis

Case.

is nro ac Justic' pdia' visa causa pō
 facere valeant in hac parte quod de
 Jure & scdm' Legem & Consuetud' Reg-
 ni nro Angl ac Libtat' & Privileg' pō
 fuit faciend' Et heas ibi hoc Breve
 T. R. G. Mil apud R. pdia' decimo die
 Aprilis Anno Regni nro septimo cujus
 quidm' Brevis de henda Corpus ptereu
 idm' f. (adtunc Dic' Com' Pott' existen')
 pdia' T. unacum tenore pdia' Brevis
 de als Capias coram Custod' Pacis
 Dñi Regis & Justic' pdia' in Brevi
 illo nōiat' ad diem & locum pō in eodm'
 Brevi content' & specificat' tulit & ha-
 buit qōque iidem Custod' Pacis Dñi Re-
 gis & Justic' pdia' in Brevi de habendo
 Corpus pdia' nōiat' visa causa pdia'
 capcionis & detenconis pdia' T. in forma
 p̄d' ipsum p̄d' T. postea & ante evasionē
 pdia' in Parr' pdia' supius fieri suppōit
 scit pdia' decimo die Aprilis Anno
 septimo supradco apud R. in dco Com
 Pott' extra Custod' ipsius f. adtunc Dic
 Com' Pott' pdia' existen' exonerari & de-
 libari fecer' ita qđ idem f. Corpus p̄d'
 T. coram Dño Rege ad diem & locum
 p̄d' in p̄d' Brevi de als Capias con-
 tent' parat' habere non potuit que qui-
 dem exōnāō & delibāō p̄d' T. extra
 Custod' ipsius f. in forma & ex causa pō
 sunt eadem evasio unde p̄d' W. supius
 se modo queritur Absque hoc qđ idem f.
 est culpabilis de aliqua evasione pdia'
 apud London' p̄dia' in Parochia &
 Warda pdia' seu alibi extra R. p̄dia'
 modo & forma p̄out pdia' W. superius

Case.

inde se modo queritur vel alibi alit' seu aliquo modo qualitercunq; qm̄ p̄out idem f. supius inde p̄litando allegabit Et hoc (Et.) Unde, (Et.)

Def. p̄litat reſcous in ducendo p̄riſonar' al' Gaol bon' plea etſi Reſcous non eſt reſtor'd. 3 Lev. 44. Marshall pleads freſh Purſuit to an Action for an Escape. 2 Mod. Intr. 145. Sheriff pleads Stat. Hen. 6. concerning Sheriffs taking Bail. Id. 151, 188, 190 Bro. Red. 96. Et Repl qđ Manuſcriptores non fuer' ſufficiē' in Comitatu. Vid. Rob. Ent. 309. Et vide 4 Part Inſt. Cleric Bar in Debt ſur obl' Vic & al' Officiar'.

Rescue.

Note, That in an Action upon the Case for an Escape brought againſt the Sheriff of London and Middleſex, they plead that they had taken the Party upon a Latitat, and that in bringing him towards the Gaol, Reſcous was made of him, and ſo return'd the Reſcous as the ſame was, and it was adjudged a good Return, and ſo a good Plea here; and Judgment was given againſt the Plaintiff. 3 Bul. 198, 199. Mary Proby and Lumley. * For the Arreſt being upon Mean Proceſs, and not upon Execution, the Sheriff is not bound to take the Poſſe Comitatus with him. But if the Priſoner had been once in the Gaol, the Sheriff ought then at his Peril to keep him ſafe; and a Reſcous from thence is no Excuse for him, neither is ſuch a Return good after Judgment; but here he may renew his Writ, and alſo have an Action upon the Case againſt the Reſcouſſors.

* Note, This was otherwiſe adjudged in the Case of Waldo and Lambert. H. 44. Eliz. B. R. 1 Cro. 868.

In an Action on the Case on Escape upon Mean Process, Defendant pleads a *Rescons*, ever since 6 Car. 1. *Per Cur'*, if it be returned is a good Plea, and it need not be averred in the Plea that it was returned; but in Debt on Escape 'tis no Plea. 3 Keb. 513, *Hill* and *Mountague*.

In Cro. Car. 240. 255. *Robinson* and *Cleyton*, upon a *Scire fac* to have Execution of a Judgment in Debt, Defendant pleads, That at another Time the Plaintiff had sued Execution by *Capias ad Satisfaciendum*, and that he was taken thereupon. Plaintiff replies, that it's true, but that the Defendant presently rescued himself and escaped; the Replication was adjudged good. And there said, That as there is no Cause for the Defendant to have *Audita Querela* when he escaped, and is taken again, unless it be for a voluntary Permission by the Sheriff, so there is not any Bar for the Plaintiff to have new Execution; and tho' no good Return on a *Qd Si* that the Defendant rescued himself, nor any Plea in Debt upon Escape, yet the Party himself shall never take Advantage of his own Tortious Act; and *Scire fac* after the Year, is maintainable.

Note, The Sheriff to Actions for Escapes, General Pleas. generally either denies the Escape, and so pleads *non permitt ire ad largum*, or else confesseth the Escape, and pleads that he made fresh Pursuit, or that he escaped by Licence of the Plaintiff.

And it hath been held, That if the Sheriff retake him on fresh Pursuit before Action brought, he shall be excused; and some say,

Case.

if after the Action, 'tis good, but not after Issue joined. *Vide Cro. Jac. 657. & Winch P. 35.*

Vide 3 Rep. Ridgway's Case, altho' it be a long Time after, yet he shall be said to be in Execution again, because he shall not take Advantage of his own Wrong.

And if the Plaintiff brings his Action before the Sheriff retake him, or if the Sheriff does not make fresh Pursuit, yet in both Cases the Sheriff may retake the Prisoner and keep his Body in Custody till he agree with him, or he may have Action on the Case for his wrongful Escape: For where the Prisoner escapes of his own Wrong, and is retaken, he shall never have an *Audita Querela* against the Sheriff, but if he escapes with the Consent of the Gaoler, he cannot take him; and if he do, the Party may have *Audita Querela*, *Sed quare 1 Roll. Ab 902. & Hob. 22.*

And if one in Execution escape, the Sheriff may not retake him, but upon fresh Pursuit; yet he may have Case against him, or Trespass, *quare Prisonam fregit. Cro. Jac. 657. 2 Roll. 282, 283. Poph. 41. 3 Co. Ridgway's Case, ut supra.*

The Sheriffs of London brought an Action upon the Case, for that the Defendant being in Execution under their Custody for 53 l. and sent Spicer had escaped, Spicer not satisfied, whereby they were compelled to pay the Debt: The Defendant pleads, confessing all the Matter, and that after his Escape Spicer had acknowledged Satisfaction on Record. Plaintiffs demur, and adjudged clearly for the Defendant, but held that an Action on the Case

Def. pleads
Satisfaction
acknowledg-
ed.

Case lieth against a Prisoner for an Escape out of Execution, to the Intent to make the Sheriff chargeable with the Debt. *Cro. Eliz.* 237. *Salteston and Payne*, F. N. B. 130. 13 H 7. 2. 14 H. 7. 1.

Case.

An Action of the Case was brought, *Trin.* 44 *Eliz.* in B. R. by *Colston* *vers.* *Rosse* and *Levett*, late Sheriffs of *York*, for that whereas according to the Custom of the City of *York* he levied a Plaint of Debt of 15*l.* against one *Leyton* before the said Sheriffs in the Court of *Guildhall* according to the Custom there, and thereupon had Summons awarded, returnable at the next Court there, which was returned *nihil*, and afterwards had a *Capias* awarded, returnable at the next Court before the said *Rosse* and *Levett*. At which Court, such a Day holden, the Serjeant returned *Cepi Corpus & paratū habuit, &c.* At which Court holden before the said *Rosse* and *Levett*, then Sheriffs, the said *Leyton* was committed to the Queen's Gaol, under the Custody of the said Defendants, there to remain until he satisfied the Debt, or the Plaintiff sit *inde preclusus*, whereupon he there remained 17 *Jan.* 43. until 18 *Jan.* 43. at which Day the Defendants suffered him to go at large, the Plaintiff not being satisfied his Debt, and so went into Places unknown, whereby he was deprived of his Debt, *Unde Acco accrebit, &c.*

The Defendants plead, that they let him at large by reason of a Writ of Privilege awarded by the Council of *York*, &c. Plaintiff demurs, because they did not alledge the Authority of the Council there, &c. And it ap-

Defendants
plead Privi-
lege, &c.

Case.

pears not to the Court, that he might be privileged there, or that they had Authority to hold Plea in Debt, so as the Plaintiff might have Justice there; and therefore held that the Bar was not good, and that the Writ of Privilege not being a good Warrant, the Defendants are responsible to the Plaintiff; for at their Peril they must take heed by what Warrant they let him out of their Custody.

Then the Defendants took divers Exceptions to the Declaration: 1. Because a *Capias* is awarded returnable at the next Court, which ought not to be so, but that there ought to be a Day certain of the Return, *sed non allocatur*, for the Process at the most is but erroneous, whereof the Sheriffs shall not take Advantage, and the Plaintiff is to declare according to the Record, and cannot vary from it.

2. Because a *Capias* is awarded returnable before *Rosse* and *Levett*, which is not good, for they might be removed before the Writ returned, and therefore ought to have been returnable before the Sheriffs, without naming their proper Names, as of Process out of this Court, or *C. B.* returnable before the Justices, without their proper Names, for the Reasons before. But all the Justices said it was well enough notwithstanding, because it appears by the Record, that they were Sheriffs at the Time of the Return; so altho' a Writ awarded to the Sheriff without his proper Name is the surest Way, for the Reasons aforesaid; yet if otherwise, and he be Sheriff at the Execution and Return, 'tis well enough: So of Process returnable before the Justices by their proper Names.

3. Be-

3. Because it is not alledged, That the said *Leyton* was arrested, and so no Action can be brought for his Escape; *sed non allocatur*, for by the Return of *Cepi Corpus & paratum habeo*, the Arrest is to be intended: And the Record says, That he is committed *p Cur* to Prison, which is sufficient, the Party being present in Court without an Arrest.

4. The Commitment is *ibidem remanens* quous, the Debt be satisfied, or the Plaintiff barred, which is not a lawful Commitment, for then he should not be bailed, which is against Law, and the Course of all Courts. But the Court held it to be well enough, for that it is the Manner of Commitments in all Courts, for the Court is not to demand Bail, yet if he can find Sureties, he shall be bailed, and it is so intended in the Commitment; wherefore notwithstanding these Exceptions, it was adjudged for the Plaintiff. *Vide 1 Cro. 893. Culston versus Rosse & Levett.*

Stow, an Attorney of the Common Pleas, was in Execution in *Norfolk* for 1000 *l.* and by Practice procured himself to be removed by *Habeas corpus* before *Coke* Chief Justice, at the Assizes in *Lent*, and then he escaped to *London*, and in *Easter* Term following he was retaken by the Bailiff. The Opinion of the Court was, that the fresh Suit made was good, tho' he took him again at the End of the Year, if Enquiry was made after him, and so by Consequence Action for false Imprisonment did not lie. *Mich 8 Jac. B. C. Stow's Case.*

Defendant taken upon Pursuit at the End of the Year.

Note, If the Defendant negligently escape, it's said the Party and Sheriff may take him again; but if voluntarily, then only the Party may

Who may take him again.

Case.

may take him again, and not the Sheriff: But if the Sheriff let him go by Consent of the Plaintiff, then neither can take him. 2 Keb. 206. *Vide postea.*

Not after a
Committitur
by new Pro-
cess.

Yet tho' the Party or Gaoler on negligent Escape, or the Party on wilful Escape, may take him again, yet not by a new *Process* or *Capias* after a *Committitur*. 2 Keb. 616.

May be ta-
ken by the
Party after
voluntary
Escape.

In 1 *Ventris Rep. pag. 4.* it is said to be adjudged in the King's-Bench. 19 Car. 2. That if a Prisoner escape by Permission of the Sheriff, yet he may be taken by the Party at whose Suit he was condemned, for it may be the Sheriff is insufficient, and it is no Reason that his own Act should dampnifie the Plaintiff. *Vide Hob. 202.*

The Escaper
dies.

If the Prisoner (upon a fresh Pursuit) dies before he is retaken, yet because it was once an Escape, an Action of Escape lies against the Gaoler. *Poph. 186.*

Defendant
must answer
the Time.

The Defendant must answer to the Escape mentioned in the Declaration as to Time, &c. for the Traverse *Aliter vel alio modo* doth not answer to the Time, but to the Manner of any Thing alledged. *Cro. Eliz. 439. Vide Dyer 66. Serjeant Minor's Case. Vide postea.*

Action for
voluntary
Escape.

Defendant pleads he escaped in November by Negligence, and that he freshly pursued and took him, and that afterwards, 27 August, he died, and traverses voluntary Escape. Plaintiff demurs, because before the Escape, and for that the Traverse was void. *Per Cur.* The alledging the voluntary Escape is immaterial, and the Sheriff chargeable without it, and he need not traverse the voluntary Escape, but Judgment for the Plaintiff, because the Defendant

Need not
traverse vo-
luntary
Escape.

Defendant doth not say he died ante Exhibi-
tionem Bille.

The Plaintiff declares of a voluntary E-
scape, the Defendant shews a negligent Escape,
and adjudged good without Traverse. *Latch.*
b. 200.

On *Mil debt* pleaded in Escape, fresh Pur-
suit may be given in Evidence; so a Release, or
any Thing that destroys the Duty. 3 *Keb.* 305,
308. *Mod. Rep.* 116.

When fresh
Pursuit may
be given in
Evidence.

Other Pleadings.

AS to other Pleading on this Head; note,
that Debt for an Escape is not within
the Statute of Limitations. 1 *Saund. Rep.* 37, 38,
1 *Siderf.* 205, 206.

Debt not
within the
Statute of Li-
mitation.

Acknowledgement of Satisfaction on Re-
cord is a good Plea, as above. *Cro. Eliz.* 237.
Salteston and Payne.

Satisfaction
on Record.

Accord with Satisfaction, no Plea in *Scire*
fac' on Judgment in Escape, not pleadable af-
ter a Judgment. 3 *Keb.* 255.

In Debt on Escape against a Sheriff upon
a *Capias* *Utlagar'* after Judgment, Defen-
dant pleads there was no such Record of the
Debt and Damages, and held a good Plea on
Demurrer. *Hob.* 209. 1 *Brownl.* 51

Nul tiel Re-
cord.

So Escape by Command of the Plaintiff, or
Escape by Consent of the Plaintiff, a good
Plea. *Cro. Car.* 329. *Mod. Rep.* 19. 2 *Keb.* 567.

By Command
of Plaintiff.

Payment to the Sheriff on a *Picri fac'* is
good, for he is commanded to levy the Mo-
ney. *Jones, pag.* 97.

Payment.

The Defendant pleaded a Release of him
who recovered to the Prisoner, being in Exe-
cution,

Release.

Case.

cution, and held no Plea. 19 H. 6. 14. *Pil debet in Debt on Escape.*

Serjeant pleads he delivered him to the Sheriff.

Case upon an Escape was brought against a Serjeant of *London*: He pleads the Sheriff commanded him to deliver his Prisoner to him, which he did, and traverses that he was guilty *Aliter vel alio modo*. The Court said, the Serjeant is an Officer of the Sheriff; and the usual Manner is to plead, That the Prisoner was in Custody of the Sheriff; and Sheriffs in *London* may make their Houses their Prisons as well as the Counters; and that the Bar was a Confession and Avoidance, but the Traverse ill; and that here is no Escape confessed, and therefore Not guilty should have been pleaded, and not to take Traverse. 2 *Keb.* 147. *Sid.* 318.

Sheriff of *London's* Prisons.

Time material.

Where the Time is material, the Conclusion, that it was the same Escape, will not make it good. *Bridgm. Rep.* 7.

Superfedeas.

The Defendant pleaded a *Superfedeas* to him, but therein misrecited the Return of the *Writ*. The Plaintiff demurred as being not the same Action, which the Court agreed. 1 *Keb.* 234.

Protection.

In Action on Escape in Debt on Judgment, Defendant pleaded, That after he was arrested he was discharged by Protection (shewed to the Plaintiff), as Servant to the Earl of *Bath*; and the Plea was held naught. 1 *Keb.* 660.

Privilege.

Vide Siderfin 269. Where in an Action on the Case on mean Process, the Sheriff pleads that a Writ of Privilege came to him *Teste* Marquess of *Newcastle*, returnable at the Sessions, shewing that Persons by Law should be privileged in going and returning from
Ses-

Sessions. The Plea was adjudged ill for Incertainty upon a Demurrer; and upon two Motions the Court doubted, whether the Privilege shall extend to such inferior Courts. *Vide 2 Keb. 845.*

Case.

Note, That in an Action on the Case for Demurrer, Escape and false Return, if the Sheriff demurs generally upon the Declaration, he loseth the Advantage of pleading Stat. 23 H. 6. c. 10. *Saund. 154, 155.*

Note, It has been adjudged, as well on a Scire fac^e as in Debt, That to plead he was in Execution, and *contra voluntatem* of the Sheriff escaped, is no Plea, no tho' it were by Permission. *Cro. Car. 24. 3 Keb 305.*

Escaped *contra voluntat^e.*

Also to a Scire fac^e on Judgment in Debt, Bar by voluntary Escape of the Sheriff or Warden is ill as to the Party-Plaintiff, and it's all one to him, whether Prisoner escape by the Sheriff's Negligence or voluntarily; for if he negligently escape, the Party and the Sheriff may take him again, but if voluntarily, then only the Party may take him again; but if the Sheriff let him go by Consent of the Plaintiff, then neither can take him. *2 Keb 187. 206, 802.*

Who may take him again.

Until of late Times. the Discharge, of the Gaoler was a good Discharge, and the Plaintiff should hold himself to the Gaoler for his Remedy, as in 3 Co. *Ridgway's Case*, 8 Co. *Drury's Case*. But now the Law is taken otherwise. *Vide supra, & Hob. 202.* yet not in Case of Rescous. *Vide 2 Leon 117. 162.*

Discharge of Gaoler.

⚔ For the Issues, Evidence, and Verdicts, upon these see Trials *per Pais*, and the *Compleat Sheriff*.

In

Case.
Sheriff's De-
puty.

In Case, the Plaintiff declares, he sued J. S. on a *Writ*, directed to the Sheriff of D. and J. S. was arrested, and that the Defendant, pretending to be Deputy to the Sheriff, took Bond of him, and let him at large. Defendant pleads, the Sheriff made him his Deputy to bail all Prisoners bailable in the County, and thereupon he took Bond of J. S. and delivered it to the Sheriff, &c. — The Plaintiff demurs, because he pleads his Deputation without Deed. But it was held good without Deed; for a Deputy does Things only as a Servant, and in Right of his Master, and so may be without Deed. *Cro. Eliz. Clecock and Dennis.*

Sheriff's De-
puty.

In Rescue, The Bailiff of a Liberty arrested the Party, and delivered him to the Sheriff's Deputy, and saith not from the Sheriff, and yet good; for in an Action on the Case he shall shew the Truth, as it is in *Rei veritate*. *Cro. Jac. 242.*

Note, The Deputy shall plead the General Issue as the Officer himself by the Statute 7 *Jac. Mo. p. 894. n. 1141.*

Need not
traverse vo-
luntary
Escape.

In *Ventris Rep. 1. pag. 211. & 217.* Sir. Ralph Bovy's Case. An Action was brought upon an Escape, for that he being Sheriff of *Surrey*, voluntarily suffered J. S. whom he had in Execution, to escape — Defendant protesting that he did not let him voluntarily escape, pleads that he made fresh Pursuit, and took him again, and doth not traverse the voluntary Escape: To which it was demurred, and resolved for the Defendant; for it is impertinent for the Plaintiff to alledge it, and no Ways necessary to his Action; 'tis out of Time

Time to set it forth in the Replication, 'tis like
 appearing before one come to the Stile. As if in
 Debt upon Bond the Plaintiff should declare,
 That at the Time of sealing and delivering of
 the Bond the Defendant was of full Age, and
 the Defendant should plead *Diens Age*, without
 traversing the Plaintiff's Allegation. 2 Cro.
 57. seems to be against it, but *inter Harvey*
 and Sir Geo. Reynel, 2 Car. in Latch, it's re-
 solved that no Traverse is to be taken.

Malefeazance, Misfeazance, &c.

Et p^{re}s^{ent} Defend^{it} dic^{it} q^{uo}d (H^{ic}co non)
 quia dic^{it} q^{uo}d p^{re}s^{ent} J. ante p^{re}s^{ent} p^{ri}mo
 Januar^{is} quo quidam p^{ri}mo di
 Januar^{is} p^{re}dic^{it} C. S. h^{ic}e suum originale
 p^{re}dic^{it} deb^{et} Centum lib^{ra}z^{us} vers^{us}
 J. impetrasset scilicet vicesimo sep-
 timo die Decembris Anno (H^{ic}c.) apud
 L. in Com^{itatu} L. retinisset ipsum G. fore
 Attorn^{um} pro eodem J. in quodam p^{ro}ito de-
 bi super demand^{is} ducent^{is} m^{er}carum quas
 quidam ducent^{is} m^{er}cas p^{re}dic^{it} N. p^{er} Willam
 copiam D^{omi}n^o Rege apud Westm^{onasterium} p^{re}dic^{it}
 Termino Sed Willarii tunc p^{ro}or^{is} sequen-
 terius p^{re}fat^{us} J. exigere voluisset, Et
 eodem J. eodem vicesimo septimo die Des-
 cemb^{ris} Anno (H^{ic}c.) sup^{ra}dic^{to} apud L.
 p^{re}dic^{it} ult^{er}ius requisivit ipsum G. ad com-
 parend^{um} ut Attorn^{um} pro eodem J. ad quelib^{et}
 h^{ic}ia sive quolib^{et} Actiones que vers^{us}
 ipsum J. ad sectam alicujus sive ali-
 quaz^{us} personaz^{us} p^{ro}secut^{is} forent p^{er} q^{uo}d idem
 G. ad p^{re}s^{ent} Octab^{is} Sed Willarii ad p^{re}s^{ent} h^{ic}e
 quod p^{re}s^{ent} C. extra p^{re}s^{ent} Cur^{iam} Cancellar^{is} p^{re}s^{ent}
 p^{re}dic^{it}

En Trans sur
Case versus un
Attorn^{um} pur
appearing
sans garrant,
&c. Le At-
torney plead
Retainer pur
le Plaintiff,
&c.

Case.

pdico primo die Ianuar' Anno, (Ec.) & ius eundem J. de deho pdco impetrasset & recognabile ad eandem Octavas Sci Hillarii ut Actozm p eodm J. compuit & ad Narracon pdia' T. pdia' super hys versus pfar J. in forma pdia' declaravit petiit licentiam p eodm J. inde infloquens usq; ad ps quinden' Pasche tunc pr' sequen' ante qm quidem quinden' Pasche scit die (Ec.) Anno (Ec.) supradcto idem G. apud L. ps in pdico Com L. delibavit eidem J. copiam Narraconis pdia' sup hys pdem versus ipsum J. in forma ps declarat' ut idem J. ipm' G. tunc existen' Actozm suum informaret qual respons idem G. p eodm' J. ad narracon ps T. ps ad ps quinden' Pasch facit & idem G. ultius die qd ps J. ante pzet quinden' Pasche seu ad eandem quinden' Pasche seu infra quatuordecim dies tunc pr' sequen' eandem' quinden' Pasch non informavit ipsum G. ad tunc existen' Actozm suum quam seu qual respons idem G. pro pfar' J. ad actionem pzedia' faceret p quod idem G. p defcu respons al eodm' J. ad respondens pzetat' T. coao p regulas pemptorias pzed' Cur' die Dni Regis nunc hic de Banco pdia' & dixit qd ipse tunc non fuit inform' p pzet J. margin' suum de aliquo respons p eodm' J. p pzetat' T. in loquela pzed' dant put ei bene licuit Et hoc (Ec.) unde per iudicium si acco, Ec.

Repl'.

Protestando
qd' non retinuit
pro placito non
requirit defendi
ad comparand'

(Precludi non, (Ec.) Quia Protestando qd pzed' J. non retinuit pzetat' & lope Actozm pro eodm' J. in pzed' pti su

sup demandū ducent' mearū quas p̄d' T.
per Willam coram dō Dñō Rege apud
Westm̄ p̄dictam Termino Sc̄i Hillarii
versus ipm̄ J. erigere voluisset p̄out
p̄dicta' J. superius allegabit p̄o p̄lito
idem G. dicit qđ ip̄ non requisivit p̄e-
fat G. ad comparendū ut Actorū p̄ eodm̄
J. ad quelibet bzia sive ad quolibet ac-
tiones que versus ipm̄ J. ad sectam ali-
cujus sive aliquarū personarū p̄secut'
farent put p̄dicta' G. superius allegabit,
Et hoc, (&c.) una cum dampnis, (&c.)
sibi adjudicari, (&c.)

Et p̄dictus G. ut p̄ius dic qđ p̄dicta'
J. requisivit ipm̄ ad comparendū ut At-
torū p̄ eodm̄ J. ad quelibet bzia sive
quolibet actiones que versus ipm̄ J. ad
sectam alicujus sive aliquarū personarū
p̄secut' farent put ip̄ superius allegabit
Et de hoc pon' se super p̄iam Et p̄dicta'
J. similiter, &c. Vide Clerk's Assist. 286.

Rejoinder
and Issue,
quod requis-
vit.

Note, Case lieth against an Attorney that
shall ingage in a Suit for or against me with-
out Warrant, or that having Warrant shall,
out of Negligence or Ignorance, negligently
or wilfully miscarry himself, and mismanage
my Cause to my Damage. 6 Co. 9. 7 Co. 1.
Dyer 361.

So if he be retain'd by me in my Cause,
and shall make Default in my Suit, whereby
Land is lost. *Lib. Int. 2 Sect. A. 1 Reg.*
Orig. 113. a.

So if he plead otherwise than he hath Au-
thority from me. *Stiles Reg. 4.*

So if he imparle in a Suit of mine, where
the Party is misnamed, and because he loseth
F f the

Case. the Advantage of the Plea in Abatement.
15 H. 7. 14. *Quære.*

So if he shall in a real Action against me suffer Judgment to be given against me by Agreement, and the Land to be lost. *F. N. B.* 95, 96. 6 Co. 9.

So for suing another Man in my Name without Warrant or Consent of mine so to do, altho' it be upon good Cause. *F. N. B.* 98. 2 Cro. 88. *Vide Stat.* 8 *Eliz chap.* 2. whereby Penalty is given.

So if he outlaw me in the Name of B. which B. at the Time is dead. 7 Co. 1. and the like. *Vide Hutt. Rep.* 125, 126.

Ad actionem ver-
sus Attorn' pro
Cogn' satisfac-
tion' super Fu-
dicium in dote
sine Warrant'
Def. placitat'
qd' Quer' re-
tinuisset eum
ad Cogn' satis-
faction'.

ET predicta W. in propria person' sua ven-
t' defend' vim & injuriam quando,
&c. Et dicit qd' predicta P. & W. acco-
nem suam predictam vsus cum here non
debent quia dic' qd' predictus P. post judi-
cium predictum reddit' & ante predictum septi-
mum diem Februar' Anno sexto supra-
dicto scilicet decimo die Januar' Anno
sexto supradictos apud D. in Com D. re-
tenuit ipsum W. essendi Attorn' ipsorum
P. & W. in Cur' dei Dni Regis hic ad
cogn' pro se & in nobus ipsorum P. & W.
& in eor' nobus tanqum eor' Attorn' in
radm Cur' hic qd' satisfac' fuit eis de va-
lore & dampnis predictis virtute ejus
retentionis idem W. postea scilicet predicta sep-
timo die Februar' Anno sexto supradicti
ven' in predicta Cur' diei Dni Regis de
Banco hic scilicet apud Westm' predicta &
ne Attorn' ipsor' P. & W. & in eorum nob-
us cogn' qd' satisfac' fuit eis de valore

Case.

Et dampnis pdictis prout ei bene licuit
Et hoc parat' est verificare unde petit
judicium si pcedia' R. & M. actionem
suam pcediam versus eum habere de-
beant, &c.

(Precludi non debent) Quia die qd
pdia' R. post judicium pdictum reddi' Repl.
Non retinuit.
Et ante pced' septimum die Februar' An-
no sext' supradicto non retinuit pced' M.
essendi Attorn' ipsorum R. & M. in Cur'
dia' Dni Regis hic ad recogn' pro & in
hoibus ipsorum R. & M. tanquam eorum
Attorn' in eadem Cur' hic qd satisfact'
fuit eis de valore & dampnis pdict' pro
ut pdia' M. supius allegavit, Et hoc
petit qd inquiratur p priam Et pdia'
M. similiter No precept' est die, &c.

Vide Ast. 39. Roll. Ent. 38. Qu' fuit re-
tent' per Principalem in Script' Obf,
Hern. 181. Bar qd quer' retinuit eum ad
comparend in una actione & requisit' cum
compatere p eo in omnibus al' actioni-
bus R. p' protest' qd non retinuit, &c.
pro plito non requisivit. Id. 183. 1 Bro. 33.
Bar per Retepner p Estranger ad com-
parend' pro Quer' per quod ill' compar',
Et in defectu Instruccion' plitabit non in- Issue.
fozm, Rob. Ent. 18. 99. Repl' pro non re-
tinuit. Id. 20.

If an Attorney or Officer shall do any
Thing besides or contrary to his Trust, (as
before) or levy a Fine, suffer a Recovery, ac-
knowledge a Judgment, enter a Suit, a Bail
or Recognizance in my Name, by which I

Case.

am damnified, I may have this Action against him. *F. N. B.* 98. 100. 19 *H.* 6. 44.

Note, That it is a Rule, That if a Sheriff, or other Ministerial Officer of any Court, shall make a false Return, or shall otherwise misdemean himself by any Malefeazance, Nonfeazance or Misseazance whatsoever, and I have any special Damage by it, I may have an Action on the Case.

For not executing of a Writ by an Officer, Sheriff, &c. *vide* 1 *Cro.* 173, 175, 873. 5 *Co.* 89. 9 *Co.* 6. *Plow.* 48. *Noy* 89. 2 *Bulst.* 200.

For not returning it when 'tis executed. 42 *Aff.* 12 *Ed.* 3. 3. 21 *Ed.* 3. 43. 10 *H.* 7. 23.

Concerning the Clerk of Assizes. 34 *H.* 6. 4.

For Mis-Return. 19 *H.* 6. 29. So for any false Return. *F. N. B.* 95 97, 98. 6 *Co.* 9. 9 *Co.* 32. *Dyer* 353. *Stiles Rep.* 431. 11 *Co.* 94.

Concerning [*Summonitus*], 2 *Ed.* 3. 14. 112. *b.* *Reg. Orig.* 12. 8 *Ed.* 3. 330. *Aff.* 38. 30 *Ed.* 3. 37, &c.

Nihil, *N. B.* 93. *B. Lib. Int. C. Sect.* 2.

Non est inventus. *F. N. B.* 39. 31 *Ed.* 3. *Process* 55. 1 *Cro.* 729.

Nulla Bona sur fieri fac. *Stiles Rep.* 474.

Aberia estraiat, which are dead. *Leon. Pl.* 203. 32 *H.* 6. 27.

Devastavit, and it is false. 5 *Co.* 32. *Lib. Int.* 11. *a.*

Cepi Corpus, and have not the Body. 1 *Cro.* 460, 624.

Languidus, where the Party is in Health. 11 *H.* 6. 42. *Pl.* 39. 2 *H.* 6. 5. *A.* 21. *H.* 6. 5. *A.* Sed 8 *Cro.* 852, 868.

Against

Against Bailiff of a Franchise. *F. N. B.* 93. Case.

2 *Ed.* 3. 43.

Against a Procurator, Summoner or Apparitor. 12 *Co.* 128. 2 *Bulst.* 264.

Commissary. 22 *H.* 6. 30.

Escheator. *Reg Orig.* 115. 21 *Ed.* 4. 23, 27.

9 *H.* 6. 60.

And so for any such like Officer. 1 *Cro.* 512.

Actio non, Quia die qđ pđia' A. *Sur Script cancellas.*
(tali die & anno) supradicto in Pa-
rochia & Warda pđ delibabit pđia' bil-
lam obligatoriam p̄fat' C. pro pđia' duo-
decim libris in eadem villa spec tunc
ibm eidem A. per eundm C. solut' ad
scriptum illud p̄fat' D. nomine acquies-
tancie earundm duodecim librarū deli-
band & sic per ipsum C. solut' cancelland
per quod idem C. pđia' primo die Junii
billam illam fregit & cancellabit prout
ei bene licuit Absq; hoc qđ pđia' A. de-
libabit billam pđia' eidem C. prout idem
A. superius versus eum queritur Et
hoc paratus est verificare unde petit, &c.

(Precludi non debet) Quia die qđ pđ
A. delibabit p̄fat' C. p̄dicta' billam obli-
gatoriam salva & secure ad usum ipsius
A. custodiend' & eidem A. cum inde re-
quisit' fuisset redeliband' modo & forma
put idem A. supius & sus eum queritur
Et hoc petit, &c. Vide *Rast. Ent.* 7.

Repl.

Issue.

Actio non) Quia die qđ iidem D. & *Devasaver bona juxta re-*
A. post decimum diem Junii Anno *torn.*
scio supradicta' & ante pđ (talem diem)
tunc p̄por' sequen nulla fuerunt bona seu
F f 3 catalla

Case.

catalla que fuerunt p̄d' W. tempore mortis sue in manibus ipsius R. & M. Administrand' sed quod iidem R. & M. cū bona & catalla que fuerunt p̄d' W. tempore mortis sue vendiderunt & devastaverunt & denarios inde p̄benerunt in proprios usus suos converterunt Ita quod p̄d' serderim libz' seu aliquam inde parcelle fieri facere non potuit p̄t per p̄d' Rectorē ipsius R. plenius apparet, viz. apud B. in Com. H. Et hoc parat' est verificare, (Ec)

Issue.

(Precludi non) Quia dic' qd' ipsi non vendiderunt nec devastaverunt aliqua bona seu catalla que fuerunt p̄d' W. tempore mortis sue p̄out p̄d' R. superius allegavit Et hoc, (Ec.) Vide Rob. Ent. 11.

Alia b'ria non
deliberat'.
Li. Lo.

ET p̄d' A. B. & C. D. p̄ — Attorē suū ven' & defend' vim & injuriam quando, &c. Et omnem contemptum & quicquid, &c. Et petunt inde diem interloquend' & eis conceditur, &c. Et super hoc dies inde dat' est partibus p̄d' coram Dño Rege usq; a die Pasche in quindecim dies ubicunq; &c. videlt' p̄lat' A. B. & C. D. ad interloquend' & tunc ad respondend', &c. Ad quem die coram Dño Rege apud Westm' ven' partes p̄d' per Attorē suos p̄d' Et p̄d' A. B. & C. D. ut prius defend' vim & injur' quando, &c. Et omnem Contemptum & quicquid, &c. Et Protestando qd' ipsi in loquela p̄d' int' p̄d' R. S. & p̄lat' C. W. in vicia Cur' Civitatis

Protestation.

tatis p̄dia' cum ea celeritate qua de jure & scdm legem & cons' Civitatis p̄dia' potuerunt p̄cesserunt & eisdem partibus Justicie complementum inde scdm legem & cons. p̄dia' fieri fecerunt p̄ placito die qđ p̄dia' R. S. actionem suam p̄dia' versus eos manutenere non debet, quia die qđ p̄dia' tria b̄ydia de p̄cedend' in loquela p̄dia' spec' non fuer' liberat' nec eorum aliquod libatum fuit eis A. B. & C. nec eorum alteri p̄out p̄dia' R. S. per b̄y & Parr' sua p̄dia' suppon' Et hoc parati sunt verificare p̄out Cur', (Ec.) unde per' judicium R. (Ec.)

Et p̄dia' R. S. die qđ ipse ab actione sua p̄dia' p̄ aliqua p̄allegat' p̄cludi non debet quia die qđ p̄dia' tria b̄ydia de p̄cedendo liberata fuer' p̄s A. B. & C. D. modo & forma p̄ut idem R. S. p̄ narrationem suam p̄dia' suppon' Et hoc per' qđ inquiratur per priam & p̄dia' A. B. & C. D. similiter Iō ven' Jur', (Ec.) Vide Rast. Ent. 84.

Repl.

Issue.

Note, That Case lies against him that shall proceed upon a Prohibition delivered him to stay a Suit he had against me, and he proceed notwithstanding. F. N. B. 92. a.

So if a Sheriff, or any other Officer or Minister of Justice, shall not do, or for his Fee refuse to do, or do amiss any Thing about his Office to my Prejudice, I may have this Action against him. 5 Co. 82. 9 Co. 10. Plow. 48. 19 H. 6. 29.

Case.

Nufance.

*Al Accon' port
pur Novel e-
recter d'un
Measé al Nu-
fance del an-
cient Mease
del Plaintiff.
Bar.*

*Per Custom de
London con-
cernant Lumi-
niers de Mea-
ses.*

Actio non, (Ec.) Quia die q^d quidam
R. S. Mil' diu antea p^{re}dict' tempus
in Parr' p^{re}dict' supp^{er}it' scilicet decimo die
Aprilis Anno regni D^{omi}ni Caroli secundi
nuper (Ec.) vicesimo fuit seir' de E in uno
messuagio, (Ec.) p^{re}dict' adjungen' messua-
gio p^{re}dict' A. B. Et sic inde seir' cristen
p quosdam Articulos sigillo ipsius A.
sigillar' E hic in Cur' p^{re}dict' faa' apud A.
p^{re}dict' in parochia E warda p^{re}dict' primo
die Maii Anno D^{omi}ni, (Ec.) agreeatum
fuit inter p^{re}dict' R. S. E p^{re}dict' A. B.
modo E forma sequen' videlicet quod p^{re}dict'
R. S. agreeasset facer' p^{re}dict' A. B. Execu-
toribus Administratozibus E Assign' suis
bon' E sufficien' dimimon' (Anglice Lease)
in lege de duobus Messuag' situal' in,
(Ec.) cum p^{re}dict' nup' in occupacon' quo-
rundam M. E R. pro termino triginta
E unius annor' hend' a festo Sed Johis
Bapte tunc p^{re}dict' sequen' p E sub annual'
reddit' 60 l. leglis monete Anglie sol-
vend' quarterialit' prima solucon' super
festum diem Sed Michis Archi Anno
D^{omi}ni, Ec. Et super bona ulteriozi consi-
deracon' q^d p^{re}dict' A. Executors E Ad-
ministratores vel Assign' sui infra dua-
decim menses p^{re}dict' sequen' erogaret E
expenderet summam quadzngent' librar'
in nova edificacon' messuagiorum p^{re}dict'
Ac q^d dimensiones (Anglice the Scant-
lings of Fur) p tant' tencement' p^{re}dict' quant'
ipse idem J. de novo edificaret app^{ro}-
bati

hanc forent p duas psonas quas ipd pd
 R. & pdia' M. eligerent ad ppositum il-
 lud Qd in psecucon' (Anglice Pursu-
 ance) & perfoꝛmacon' Articuloꝝ pdia'
 pdia' R. p Indenturam int' pdia' R. &
 pflat' M. fact' quinto die Novemb Anno
 (Ec.) dimisit pdia' messuagium (int' al')
 prope messuagium pflat' R. adjungen' pflat'
 M. a festo Sed Johis Baptis' tunc pꝛor'
 sequen' ante dat' Indentur' ill' duran'
 termino trigint' & unius annozum Vir-
 tute cujus quidem dimissionis pdia' M.
 in messuagium pꝛed' intravit & fuit in-
 de possessorat' Qd' quidem messuagium
 tempore dimissionis pꝛed' fact' fuit anti-
 quum messuagiū & fuit pꝛor' & contigue
 adjungen' pdia' messuagio pꝛed' R. in
 Narracon' pꝛed' supius menconat' Qd' pꝛed'
 fenestra in Culina pꝛed' messuagit
 pꝛed' R. in Narracon' pꝛed' menconat' fuit
 contigue adjacen' ad & usus pꝛed' mes-
 suagium ipsius M. qd' antiquū messuag
 ipsius M. pꝛed' (tali die) Anno, (Ec.)
 supradic' fuit vetustum in decasu valde
 indigen' & necesse reedificari & construi
 in illa parte sic adjacen' & adjungen' pd'
 messuagio pꝛed' R. Idemq' M. ulte-
 rius dic' quod Civitas London' est & a
 tempore cujus contrar' memoria homin'
 non existit fuit antiqua Civitas Qd' in
 eadē Civitate hitur & a toto tem-
 pore cujus contrar' memoria homin'
 non existit hebatur illis laudabilis & an-
 tiqua consuetudo usitat' & approbat'
 videt' qd' si quis huit messuagiū vel do-
 mū in pꝛed' Civitat' M. prope vel conti-
 gue

Case.

gue adjungen' vel adjacen' alteri messuagio vicini sui ibidem & fenestre vel luminar' talis messuagii vel domus suat aspiciend' & alius alterum messuagium vicini sui sic adjacen' vel adjungen' licet humod' messuagia & domus ac luminar' & fenestre inde fuer' antiqua tamen humod' vicinus p'prietat' p'dicta' alterius messuagii sic adjacen' vel adjungen' p' & juxta consuetud' Civitat' p'dicta' in eadem Civitat' per totum tempus p'dicta' usitat' & approbat' bene & licite potest potuit & consuevit ad libitum suum p'dicta' alterum messuagium suum sic adjacen' & adjungen' de novo super antiquam fundacon' [Anglice the ancient Foundation] in tanta altitudine edificare quant' p'prietat' domus p'dicta' sic de novo construend' placuit cursum aduersus & ex opposito p'dicta' luminar' & fenestris vicini sui adjungen' & luminar' & fenestre' obscurare nisi sit vel fuit aliquod special' scriptum Chirographum vel Record' convencon' vel restriction' in contrariu' in ea parte: Presidensq; M. postea scilicet (tali die) Anno, (Et.) supradicto apud London' p'dicta' in parochia & warda p'dicta' p' & juxta consuetud' p'dictam p'dicta' messuagium in possessione sua ut p'fertur existend' p'dicta' messuagio p'dicta' R. ut p'fertur adjungen' dirupit [Anglice did take down] ac super antiquam fundacon' p'pe Culinam p'dicta' R. in Parracon' p'dicta' menconat' (super quam p'dicta' messuagium p'dicta' M. pariter sitisset) ibm in ea parte adjungen' & adjacen' p'dicta' messuagio p'dicta' R. & p'dicta'

pred' fenestre' in Culina predia' inde ad-
 bersus & opposito in novum messuagiū
 & domū ibi edificabit & p̄inde fenestre'
 predia' in Culina pred' (nisi special scripse
 Chirographo vel Record' convencon' in
 contrarium inde in ea parte tunc vel
 unquam ante hac existen' per totum tem-
 pus in Narracon' pred' menconat' rōne in-
 de strucon' pred' obscurabit & obstruit
 put ei bene licuit Et hoc parat' est ve-
 rificare Unde petit iudiciū si pred' a-
 ctionem suam p̄ inde usus eum habere
 seu manutenere debeat, &c.

Vide Bro. Red. 100. Vidian 29. Co. Ent. 20.
 Def. justifie repacon' guttur' Et p̄scribe p
 aque cursu sive Canali Reple quod fecit
 Guttur' p̄o passag' sanguinis & sordido-
 rum Et travers' p̄script' p̄o aque cursu,
 &c. Hern. 237. Bar q̄ Def. possess. de
 Mess. & Curtilag' in Civit' B. p̄ neces-
 sario usu erexit cumulum fasciū in
 Curtilag' Et Travers' le Prescription'
 de Luminers Et Issue sur le Traverse.
 Rob. Ent. 8.

De Erectiōe Cois' pistrini. 1 Bro. 47.

De Craltacon' Riparum. Rob. Ent. 45.

Note, It's said, That if a Man set up a House
 upon a new Foundation so near to my House,
 that thereby he stop up my Window and take
 away my Light and Prospect, I may have an
 Action of the Case against him.

But if his Buildings be upon an old Founda-
 tion, and where there was a House before,
 no Action will lie for this; for *cujus est solum,*
ejus est usque ad Cælum. 5 Co. 10. 9 Co. 55.
 New B. Ent. fol. 19, 20. *Vide postea.*

Also

Case.

Also if a Man do over-build my House, so that his House-Eves do drop upon my House and cause it to perish, or trouble my Dwelling, I may have an Action against him. 22 H. 6. 14.

So the Erecting of a Dye house, Pig-stye, House of Office, Brew-house, &c. may be a Nufance.

For that of Pig-styes, *vide* 5 Co. 73, 101.

For a Brew-house, Chandler's Shop, &c. 13 H. 7. 26. 1 Cro. 367.

In Banco Reg.

An Action for cutting down the Bank of a River, whereby his Meadow adjoining was surrounded; the Defendant justifies by Prescription for the Reparation of his Mill. The Plaintiff demurred, and adjudged against the Plaintiff that the Prescription was good, and the Manner of Pleading; but upon Error brought in *Seaccario*, and assigned thus, (*viz*) For that he prescribed to cut down the Banks between the River which runs to the Defendant's Mill, and the River call'd *Old Charwell*, and saith, That he cut down the Banks of the said River; and saith not between the *Old Charwell*, pursuant to the Prescription: The Court held it to be an incurable Fault, and therefore the Judgment was reversed, and the Record remanded; and the Court of *King's-Bench*, against their former Judgment, awarded a Writ of Inquiry of Damages. *Hetl. Rep.* 118. 1 Cro. 747. *Winchcombe* and *Shepherd*.

An Action was brought against the Defendant for stopping of Three ancient Lights, which

Case.

which had been there Time out of Mind, and that the Defendant stopp'd them up *totaliter ad dampnum, &c.* The Defendant confessed the Stopping of Two of them, and Part of the Third, and justifies by the Custom of *London*, That one may build upon an old Foundation, and upon his own Land, &c. It was adjudged for the Plaintiff. 1 *Bulstr.* 116. *Newal and Barnard*; because he traversed *absqz hoc*, that he stopp'd up the Third; whereas he should have pleaded Not guilty to the other Part of the Third Light.

In an Action upon the Case for the stopping a Water-course, which had used to have its Current from such a Place, through such a Place, and so to come into the Neighbour's Yard, and there to supply a Pond with Water, for the necessary Watering of his Cattle; that the Defendant had erected a Stone Wall and so hath stopp'd it, that thereby the Plaintiff wanted his Water, and was thereby damaged. The Defendant pleaded in Bar an Unity of Possession in the Land, of the House and Place to which, and of the Land through which, and of other Land of which, &c. And the Question was, Whether this Unity of Possession will extinguish this Water-course? And the whole Court agreed, That the Water-course was not extinct thereby, and the Defendant's Plea not good: Judgment for the Plaintiff. But it was agreed, that for Commons and private Ways and Common appendant, and such like Profit out of Land, such Things will be extinct by Unity of Possession, but not publick Ways and Water-courses, 3 *Bulst.* 340. *Sbery and Piggot*.

Case.

The Plaintiff declares in an Action upon the Case, for laying several Loads of Loggs in the Highway in C. to B. whereby the Way was much straitned, so that the Plaintiff riding in the Evening of such a Day on the said Highwny, his Horse stumbled upon those Blocks, and much hurt him; for which, &c. The Defendant confess'd it to be a Highway; but saith, That the Town of C. is an ancient Village, wherein all the Inhabitants having ancient Houses, used to lay Logs in waste Places of the said Way, before their Doors, for their Fuel, leaving sufficient Passage for Chariots, Horsemen and Footmen, and that he was seised in Fee of an ancient House, and laid Logs for his Fuel in the waste Places of the Highway, leaving sufficient for Passage of Chariots, Horsemen and Footmen: And the Plaintiff riding by the Highway, *improvidē* turn'd his Horse upon the Logs, and fell, &c. The Plaintiff demurs. And it was adjudged that the Action well lay for the Plaintiff, because he having Special Damage, had Cause to bring that Action, altho' the Nufance be a publick Nufance, and that the Prescription to make a Nufance is not good; for it is against Law to prescribe in such a Manner, &c. *Vide* 2 Cro. 446. *Fowler and Saunders.* 5 Co. 73.

For the Nusances of stopping Water-courses by Rubbish, &c. *Vide* 1 Cro. 191, 402.

For cutting down the Banks of a River. 1 Cro. 747. *Hetl.* 118.

For stopping Rivers, by which they overflow my Ground. *Godb.* pl. 68.

For

For diverting them, by which my Ground is dried, &c. *Godb.* 70. *Dyer* 248. *Jenkyn Cent.* 6. *Case* 65.

— By which my Mill is hinder'd. 2 *Cro.* 263. *Stiles Rep.* 370. 4 *Co.* 86.

And *Note*, That in common and publick Nufances done in the publick Ways, the proper Way of Redreffing the same is by Presentment and Indictment at the Sessions, or at the Law-Day Court. Yet if, by Occasion of such publick Nufances, any Man happen to have Special Damage above another Man, as when by digging a Pit, or laying a Block in the Highway, he or his Horfe is hurt, he may have this Action on the Case for it. See *Stiles* 335. *Poph.* 166. 1 *Bulst.* 47. 5 *Co.* 103. 1 *Cro.* 604. 2 *Cro.* 446. 9 *Co.* 113.

Note, That besides the general Division made before in Bars as to the Actions on the Case, viz. That they are generally either concerning Words or Deeds: They may be, and are more particularly divided as follows, viz.

1. Bar inde sur Assumpfit General.
2. Al Actions del Exec' vel Adm'.
3. Bar p Exec' & Adm.
4. De Rebus Venditis.
5. De rebus deliberand'.
6. De denar' recept', &c.
7. De Serbientibus.
8. De Terris.
9. De Opibus & Salaris.
10. De Arbitrio pformand'.
11. De Feodis Attor'd.

Case.

12. De Actione vers Attoyn.
13. De Vicecomitibus & al'.
14. De Seais.
15. De indemn' conserband'.
16. De Maritag.
17. De manger & boyer.
18. De curis moꝝboꝝum.
19. De negligence & misfeasance.
20. De Rebus Mercatoris.
21. Bar al Warrantie.
22. Al Wager.
23. Al Deceit.
24. De franchises' Lesis.
25. De indebita prosecutione.
26. De Disturbance de Common.
27. De Disturbance de Offices.
28. De Nufance.
29. Bar al non feſance.
30. Bar al Trover.
31. De Imposicion' Criminali.
32. De Indictamentis.
33. Bar al Slander.
34. Al Courts General.
35. Al Scdm Cons Regni fundit'
36. — Judicia inde.

For which see Mr. Cornwall's new printed Tables, *Tit' Action sur le Case*, in *Bar inde*.

See also the General Abridgment lately published.

1. As to Pleadings in Actions for Fire. *Fol 111.*
 2. Pleading in Actions against a Carrier.
- Id.* 13.

3. Plead-

3. Pleading in Actions against Inn-keeper.
Id. 18.
4. Pleading in Actions of Trover. *Fol.* 23,
25.
5. Pleading in an Assumpsit. *Id.* 69, 77.
6. Pleading in Actions for Words. *Id.* 162,
166, 170, &c.
7. Of a Nufance. *Id.* 172.
8. Pleader and Declarations in Nature of dis-
ceit upon a Warranty. 178, 184, &c.
9. The like on Cases in Nature of a Writ of
Conspiracy. 211, &c.
10. For a false Return. *Id.* 179.
11. For an Escape. *Id.* 190.
12. Upon Legal Proceedings in Courts.
Id. 194, &c.
13. Pleader in Actions upon the Case in
general. *Id.* 214.
14. *Vid.* *ibm* *fol.* 720, &c. *Tit. Bar.*

Bar in Covenant.

N. **E**t p̄dia' D. p̄ A. B. Attor̄d suum
ven' & defend' vim & injur' quan-
do, &c. Et dic qđ ipse non infregit con-
ventionem p̄dia' moda & forma prout
p̄ed' J. lupius versus eum queritur.
Et de hoc pon̄ se sup p̄riam Et p̄ed' J.
alter, (&c.) Ideo p̄cept' est Dic qđ De-
nire fac̄ hic die Mercur' prox' post tres
Septiānas Scđ Trinitat' duodecim, (&c.)
p̄ quos (&c.) Et qui nec (&c. Ad recogn̄
(&c.) quia tam (&c.)

*Non infregit
conven̄ onem
modo & for-
ma, &c.*

Vide Rob. Ent. 170.

G g

N. Quando

Covenant.

*Le Def. pled'
Performance
de tous Cove-
nants in gene-
ral.*

ff. **Q**uando, (Ec. Accō non) quia dic' qđ ipse idem R. post sigilla-
tionem & confectionem Indenture pzed' usq'
diem impetrationis Wille pzed' pimple-
bit pformabit & custodibit omnes & sin-
gulos convenções concessiones solucio-
nes articulos & agreamenti' ex parte ip-
sius R. pformand' pimplend' & custodiend'
secund' formam & effectū Indentur' pzed'
Et hoc, &c.

*Sur Covenant
pur provider
pro Chivals
les Provost.
Bar.*

*Qd' Def. pro-
videbat, &c.
les Provost
accordant al
Covenant.*

ff. **Q**uando (Ec. Accō non) quia dic' qđ
ipse per pdict' decem Septimanas
pvidebat p pzed' sex spadon' bonum &
lufficiens fenum Accetiam bonas & suffi-
cient' avenas cum sufficien' stramine &
substramine scdm formam & effectum In-
denture pzed' videlt' apud Manerium pze-
dict' Et de hoc pon' se sup priam Et
pzed' C. silitur (Ec.) Ideo (Ec.)

*Sur Covenant
a fair Quick-
ledge.*

Bar.

*Qd' Def. plan-
tavit quant'
neceffe fuit.*

ff. **Q**uando (Ec.) Et dic' qđ pdict' P.
(Accō non) quia dic' qđ ipse pze-
dictis temporibus confectionis pdict'
separalium particat' censur' in Narras-
tione pzed' supius specificat' tant' de eis-
dem separalibus particat' censuraz cum
serobe & ripa fecit & cum virgulis (vocat'
Quicksets) & plantis plantavit quantū
inde necesse fuit p ipsum C. sic fieri &
plantari scdm formam & effectum In-
dentur' pzed' Et hoc (Ec.)

Vide Bro. Met. 130. Rast. Ent. 136. Hern.

271.

ff. Et

Covenant.

Et pred' J. p. p — Attorn' suum *Super Litera*
 ven' & defend' vim & injuriam quan- *Attorn' ad re-*
 o, &c. Et dicit qd' pred' T. actionem *cipiend' pecun*
 iam predict' versus eum habere seu *le breach qd'*
 manuteneere non debet Quia dicit qd' *Def. recepit*
 isle non recepit de prefato M. S. pre- *io l. post de-*
 dictas decem libras sup' predict' quinto *disset potesta-*
 te Octobris quas idem M. S. ei sup' *tem querenti*
 idem die solvisse debuit sedm' formam *illas recipere*
 effectum Conditionis pred' put' predict' *ad suum pro-*
 p. p. Narracionem suam pred' superius *prium usum.*
 appon' Et de hoc ponit se sup' priam & *Bar.*
 pred' T. silitur (&c.) *Qd' Def. non*
recepit.

Et predict' J. p. — Attorn' suum *Indentura non*
 ven' & defend' vim & injur' quan- *est factum.*
 o, &c. Et dic' qd' isle de actione Con-
 encionis pred' virtute Indenture pre-
 dict' onerari non debet quia dic' qd' In-
 dentura illa non est factum suum Et de
 hoc ponit se super priam Et predict' R.
 silitur, (&c.)

Vide Rob. Ent. 164. Id. 209. Non dimi-
 t al part & Demurrer al part. 1 Saund.
 108. 2 Mod. Intr. 209. Vide Co Ent. 117.
 Rob. Ent. 166. Bar. de reparacion', 1 Mod.
 Intr. 140, 141. 2 Mod. Int. 208. 1 Saund. 108.
 Saund. 418. Vidian 129. Bro. Red. 143, 157.
 Finch 144. 2 Ven. 124, 128.

Covenant.

*Conventio su-
per Indentur'.*

Bar.

*Per script' re-
laxation' &
tenor sequitur
in hec verba.*

ET p̄dia' C. per — Attorñ suum
ven' & defend' vim & injur' quan-
do, &c. Et dic' qđ p̄dia' W. actionem
suam p̄d' versus eum here se manuten-
non debet quia die qđ p̄dia' W. p̄
confectionem Indenture p̄dia' scit viceſi-
mo septimo die Novemb̄ris Anno Regn-
dai Domini Regis nunc sexto apud
London' in Parochia & Warda p̄dia'
p quoddam Scriptum suum relaxationis
quod idem C. sigilla p̄dia' W. signat
hic in Cur' p̄fert cujus dat' est eisdem
die & anno relaxabit eidem C. omnes ac-
tiones cujus quidem scripti relaxationis
tenor sequitur in hec verba: Be it known
unto all Men, &c. Et hoc parat' est verifi-
care Unde petit iudicium si p̄dia' W.
actionem suam p̄d' versus eum here
debeat, &c.

*Al Count sur
Indenture per
Custom de
London' ver-
sus Apprenti-
cium qui de-
cessit a servitio,
&c.*

*Bar. Prote-
stand' Qd' non
est talis consue-
tudo prout, &c.*

*Pro pl'ito qđ
Def. obtulit
servire, &c.
& quer' recu-
savit ipsum
recipere.*

ET modo ad hunc diem scite diem
Mercur' p̄or' post Octab' Sed Hil-
lar' isto eodem Termino usq' quem diem
p̄d' D. huit licenciam ad Villam p̄-
dia' interloquend' & tunc ad respon-
dend', &c. coram Dño Rege apud Westm'
ven' tam p̄d' C. p Attorñ suum p̄dia'
qm p̄d' D. p J. S. Attorñ suum C.
idem D. defend' vim & injur' quando, &c.
Et dic' qđ p̄dia' C. actionem suam p̄d'
versus eum here seu manutenere non
debet quia protestando qđ in Civitate Lon-
don' p̄d' non hetur nec a tempore cu-
jus contrat' memoria hominum non existi-
hebat talis consuetudo usitata & appro-

in eadem qual' pzed' C. p Narrationem Covenant.
 suam pzed' superius suppon' protestandoq;
 etiam qđ idem D. non decessit a servitio
 dicti C. pout idem C. superius allegabit
 pzo p'ito idem D. dicit qđ ipse obtulit
 seipm' servire dicto C. Magistro suo du-
 rante termino Annoꝝ in Indentur' pze-
 dia' superius specificat' scdm' formam &
 effectū Indentur' illius Qđq; pzed' C.
 eundem D. in servitio suo recipere peni-
 tus recusabit Absq; hoc qđ idem D. re-
 cusabit servire pzed' C. Magistro suo pzo
 resid' termini septem annoꝝ scdm' tenor'
 & effectum Indenture pzed' pout pzed' C.
 superius inde narrando allegabit. Et
 hoc parat' est verificare Unde petit Ju-
 diciū si pzed' C. actionem suam pzed' C.
 inde Usus eum here seu manutenere de-
 beat, &c.

Vide Bro. Red. 140.

Et pzed' P. p ——— Attoꝝ suum
 ven' & defend' vim & injur' quan-
 do, &c. Et dic' qđ pzed' B. actionem
 suam p'dict' Usus eum here seu manute-
 nere non debet Quia protestando qđ pze-
 dia' B. non performabit aliqua in Inden-
 tura p'dict' in Narratione p'dict' superius
 specificat' ex parte ipsius B. pformand'
 p p'ito idem H. dic' qđ ipse idem H.
 tempore confection' Indenture p'dict' ute-
 batur arte Pictoris (Anglice of a Picture
 Drawer) qđq; ipse idem H. a p'decimo
 quinto die Marti Anno Regni dicti Rm'
 Regis nunc vicesimo sexto supradicto
 apud London' p'dict' in Paroch' & Warda
 G g 3 p'dict'

*Al Count fuer
 Indenture d'
 Apprenticeship
 de non inveni-
 end' convenien-
 cium, &c.*

Bar.

*Qd' Def. ik-
 veniebat pro
 Apprentic' suo
 sufficien' diet',
 &c. quousq;
 recessit a ser-
 vitio.*

Covenant. p̄dia' usq; p̄mū diem Octobris Anno Regni dñi Wm Regis nunc vicesimo septimo supradicto (quo quidem p̄mo die Octobris ipse idem B. apud London p̄dia' in Parochia & Warda p̄dictis a servitio ipsius H. sine licentia ipsius H. recessit) sufficien' esculent' poculent' & lect' & al' necessar' Apprenticio sp̄ciā toto tempore p̄dicto p̄ eodem B. indenibat & p̄videbat iuxta formam & effectum Indenture p̄dicta', Et hoc parat' est verificare Unde, &c.

Vide Vidian's Ent. 140.

Ac accon' per Civem Londini versus Apprenticium suum

Bar.

Per Convenc' performat' & travers les several Breaches en le Count.

Et p̄dia' G. (quando, &c.) Et quoad fraction' Conventionis p̄dicta' de eo qđ idem G. post p̄dicta' festum Sed P. post datum Indentur' p̄dict' & ante finem & terminū septem Annoꝝ a servitio ipsius S. recessit superius fieri supposit' idem G. dic' qđ p̄dia' S. accō non, quia die qđ p̄dia' S. post p̄dict' festum (&c.) scit p̄dias decimo die M. Anno (&c.) supradico apud London (&c.) ipsum G. a servitio suo p̄dict' amovit p̄ quod idem G. a servitio ipsius S. cum licentia & voluntat' sua tunc & ibi recessit Absq; hoc qđ idem G. a p̄dict' servitio ipsius S. sine licentia ipsius S. recessit prout p̄dict' S. p̄ narrationem suam p̄dict' superius inde suppon' Et hoc parat' est verificare unde petit Iudicium si p̄dicta' S. actionem suam p̄dict' inde versus eum here debeat Et quoad fraction' Convention' p̄dict' de eo qđ idem G. quamplur' merchandizas & quamplur' denar' summas

Traverse.

nas ad valenc' &c. de bonis & denar' Covenant.
 pdia' S. ppiis inordinate devastabit
 superius fieri supposit' idem G. dic' qd
 pdia' S. (actio non) quia dic' qd ipse
 inter pred' festum (&c.) & pdia' de-
 cimum diem M. omnes Merchandizas
 & denar' summas pdia' S. per ipsum G.
 infra idem tempus seu ad aliquod tem-
 pus pantea recept' per mandatum pdia'
 S. ad usum ipsius S. ppi' fidelit' & or-
 dinate disposuit & convertibat Abqz hoc
 qd idem G. inordinate devastabit ali-
 quas Merchandizas seu denariorz sum-
 mas pdia' S. ppi' sine licentia & volun-
 tate ipsius S. contra formam & effectum
 Indentur' pred' put idem S. superius
 allegabit Et hoc (&c.) Unde Iudicium
 (si actio &c.) Et quoad fraction' Conven-
 tionis predict' de eo qd idem G. scribit
 dampnum fuisse factum pfor' S. per pred'
 M. T. in devastand' bona & catalla
 pred' S. eo qd idem G. illud p posse suo
 non impedivit nec pferat' S. inde statim
 non premonibit superius fieri supposit'
 idem G. dic' qd predict' S. (actio non)
 quia dic' qd ipse non scribit dampnum
 pred' fuisse factum pferato S. p predict'
 M. T. put predict' S. p narration' sua
 predict' superius suppon' Et de hoc pon'
 se super Patriam Et pred' S. inde sili-
 ter Et quoad fractionem Conventionis
 pred' de eo qd idem G. commisit forni-
 cationem cum pferat' M. M. superius fieri
 supposit' (actio inde non) Quia dic' qd
 ipse non commisit fornicationem cu' pre-
 ferat' M. put predict' S. p narrationem
 suam

Traverse.

Issue.

Covenant.
Issue.

suam pzed' superius inde suppon' Et de hoc pon' se sup Patriam Et pzedia' S. S. inde scilicet Et quoad fraction' Conventionis pzedia' de eo qđ idem G. ad pzed' jocum illicitum cum diversis improbis personis lult' superius fieri supposit' (actio non) Quia dic' qđ ipđ non lult' ad pzed' jocum illicitum cum pila & acicula contra formam & effectum Indenture pzed' prout pzedia' S. per Narracion' suad pzedia' superius suppon' Et de hoc, (Ec.) Et quoad fraction' Conventionis pzedia' de eo quod idem G. tabernas pzedicas frequentabit supius fieri supposit' idem G. dicit qđ (actio inde non) Quia dic' qđ ipđ ad separales vices inter pzedicum Festum Scđ P. & pdia' decimū die M. Anno septimo supradicto p mandat pdia' S. accessit ad diversas tabernas in Parochia & Warda pdicis ad vinum ab eisdem tabernis eidem S. auferend' & deliberand' Absq' hoc qđ idem G. tabernas pdicas sine licentia ipsius S. frequentabit contra formam & effectum indentur' pdice Et hoc (Unde petit Iudicium si actio (Ec.)

Repl'.
Per maintenance del
Count.

Et pdia' S. quoad pdicum pfitum pdia' G. quoad fractionem Conventionis pdice de eo qđ idem G. post pdicum Festum Scđ P. proxim' post datum Indenture pdia' & ante finem & terminum pdicorū septem Annorum a servitio ipsius S. recessit supius in barram inde pfitat' dic' qđ per aliqua in eodem pfito palleget' (pcludi non) Quia ut prius inde dic'

die qđ pđia' G. a pđicto serbitio ipsius Covenant.
 S. sine licencia ipsius S. receat prout ipđ
 p Narr suam pđeam inde supponit Et
 hoc petit quod inquiretur p Patriam &
 pđia' G. aliter Et quoad pđem pñitum Issue,
 pđed G. quoad fraccōd Conbencēis
 pđed de eo qđ idem G. bona ipsius S.
 non devastaret superius in barram inde
 pñitat idem S. die qđ ipđ p aliqua in
 eodem pñito pñallegat (pñcludi non)
 Quia ut prius inde die qđ pđia' G.
 inordinate devastabit quamplur Merch-
 andizas & denar summas ipsius S.
 sine licencia & voluntat' ipsius S. con-
 tra formam & effectum Indenture pđed
 put ipđ per narracōnem suam pđictam
 superius inde supponit Et hoc petit (Ec.)
 Et quoad (Ec.) de eo quod idem G. ta-
 bernas non frequentaret superius in bar-
 ram inde pñitat idem S. die qđ ipđ p
 aliqua in eodem pñito pñallegat (pñcludi
 non) Quia ut prius inde die qđ pđia'
 G. tabernas pđia' sine licencia ipsius S.
 frequentabit contra formam & effectum
 Indenture pđia' prout ipđ p narracōnem Issue.
 sua pñedam superius inde supponit Et hoc
 petit qđ inquiretur p Patriam. Et pñ-
 dia' G. aliter Ideo quoad triand tam
 exitu' istum quam pñedicos ab exit' supe-
 rius iunct' pñcept' est Die qđ Venit fac
 hic (Ec.)

Vide Privileg' Londini 324, 330, 338, 345,
 Vidian 80, 84, 140. Winch. Ent. 137, 155.

Et

Covenant.

*Al' Count port
per le survivor
des Lessees vers
Lessor q' expul-
se le Lessor.*

Bar.

*Per surrend'
& Issue sur
Ceo.*

Et pcedia' A. p — Attorn suu' vbi & defend' vim & injur quando, (Ec.) Et dic' qd' pda' C. accōnem suam pda' versus eum here non debet quia dic' quod idem C. in dco Fesio Sed Michis dco anno quinto apud A. pced' sursum reddidit eidem A. Manerium pcedia' cum suis ptinen' p quod idem A. pstat C. de firma Manerii pced' expulit & ejetit put ei bene licuit Et hoc paratus est verificare unde petit judicium si pced' C. accōnem suam pda' versus eum here debeat, Ec.

Repl'.

Et pced' C. dic' qd' ipd' ab accōne sua pda' versus pstat A. habens p aliqua per ipd' allegat pcludi non debet, Quia dic' qd' ipd' non sursum reddidit pstat A. Manerium pda' eum ptinen' in forma qua idem A. superius allegavit Et hoc petit qd' inquiretur per Patriam Et pced' A. suster Jo. Ec.

Vide Mod. Intr. 207. 1 Saund. 235.

*Al' Count port
per Executrix
vers Executor
pur ceo q' al ne
puit enjoyer ac-
cordant al Co-
venants en l'
Indenture.*

Bar.

*Quo Des. usq' de-
mise unauter
mesuage en sa-
tisfaction del
damages, Ec.*

Et modo ad hunc diem scilicet diem Ven-
neris pr' post Crm Sed Trinitatis
ista eodem Termino usq' quem diem
pcedia' A. fuit licentiam ad Villam
pda' interloquend' & tunc ad respon-
dend', Ec. coram Dno Rege apud Westm'
vbi tam pced' M. per Attorn' suu' pced'
qm pced' A. per C. S. Attorn' suu'
Et idem A. defend' vim & injur quando
Ec. Et dic' qd' pced' M. accōnem suam
pced' inde versus eum here seu manute-
nere non debet quia dic' quod ante ex-
hibi-

hibitionem Wille ipsius M. p̄d̄ia' in hac Covenant.
 parte scilicet septimo die Januar' Anno
 Regni deī Dñi Regis nunc quinto a-
 pud Civit' Lincoln' p̄d̄ia' ip̄e idem R.
 p̄ factum suum indentat' dimisit eidem
 M. unū Messuagiū ipsius R. jacent' &
 existent' apud D. in Paroch' (Ec.) in p̄d̄
 Civit' L. hēnd' & tenend' eidem M. p̄ &
 durā termino nonagint' & novem an-
 nor' (si p̄dict' M. tam diu vivere con-
 tingeret in plena satisfactione & exone-
 ratione omnium dampnorum p̄ ipsam M.
 sustent' & demand' ipsius M. occōne p̄-
 dict' fraction' & non p̄lōzmacon' Convenē
 p̄dict' & p̄d̄ intracon' & expulcon' ip-
 sius C. in & sup possessionem ipsius M.
 in hac parte Et hoc idem R. parat' est
 verificare Unde petit judicium si p̄dict'
 M. actionem suam p̄d̄ inde verlus cum
 here seu manutenere debeat &c.

Et p̄d̄ M. dic' qđ ip̄a p̄ aliqua p̄ p̄fat'
 R. supius p̄litando allegat' ab actione
 sua p̄dict' inde verlus cum hēnd p̄cludi
 non dabet quia die qđ p̄dict' R. non di-
 misit eidem M. p̄d̄ unū Messuagiū in
 p̄lito p̄d̄ menconat' in plena satisfac-
 tione & exoneracone omnium dampnorum
 p̄ ipsam M. sustent' & demand' ipsius M.
 occōne p̄d̄ fraction' & non p̄lōzmacon'
 Convencon' p̄d̄ & p̄d̄ intracon' & ex-
 pulcon' p̄fat' C. in & sup possessionem
 ipsius M. in hac parte modo & forma
 put p̄d̄ R. supius p̄litando allegabit
 Et hoc petit quod inquiratur per Pa-
 triam, (Ec.)

Vide Bro. Red. 149.

CC

Repl.
 Que Def. ne
 unques demise
 in plein satis-
 faction', &c.
 Et tendrist Is-
 sue sur ceo.

Covenant.

*Al Count sur
vend' de fru-
ment per Inden-
ture & nient
deliver al jour
Part.*

*Que il offer a
deliver, &
laui' refuse.*

Monition done.

Et p̄dict' R. p̄ — Attorñ suū vend' & defend' vim & injur' quando, &c. & dic' qđ p̄dict' P. actionem suam p̄dict' versus eam here non debet quia dic' qđ idem P. post p̄dict' vicesimum diem Aprilis in p̄dict' Indentura specificat' & ante p̄dict' festum Sed Petri in eadem Indente' similiter specificat', viz. p̄dict' vicesimo septimo die Junii p̄xor' ante dictum festum Sancti Petri apud W. p̄dict' p̄munibit ipsum R. ad deliband' eidem P. p̄dict' trigint' quarteria frumenti apud domum manŕonal' p̄dict' P. in p̄dicta Villa de W. scđm formam & effectum Indentur' p̄dict' Et idem R. dic' qđ ipse postea videt' vicesimo quarto die Junii p̄xorim post p̄dict' vicesimum secundum diem Aprilis & ante p̄dict' festum Sancti Petri obtulit ad deliband' p̄lato P. p̄dict' trigint' quarteria frumenti apud W. p̄dictam scilicet ad domum manŕonal' ipsius P. ibm scđm formam & effectum Indentur' p̄dict' Et idem P. eadem trigint' quarteria frumenti de eodem R. adtunc & ibm recipere recusabit Et ulterius idem R. dic' qđ ipse semper a p̄dict' vicesimo primo die Junii hucusq; parat' fuit & adhuc existit ad deliband' p̄dict' P. p̄dict' triginta quarteria frumenti scđm formam & effectum Indenture p̄dict' si idem P. ea de eodem ad. recipe voluerit Et hoc parat' est verificare unde perit judicium si p̄dict' P. actionem suam p̄dict' versus eum here debeat, &c.

Et

Et p̄dica' P. dic' qđ ipse p aliqua palle-
gat' ab actione sua p̄dica' habend' p̄cludi
non debet quia non cogit aliqua per p̄pre-
dia' P. pallegat' esse vera dic' qđ p̄pre-
dia' P. non obtulit ad deliband' eidem
P. p̄dica' trigint' quarteria frumenti
scdm formam & effectum Indenture p̄-
dia' put p̄dia' P. supius allegabit Et
hoc petit quod inquiratur p p̄p̄iam Et
p̄dia' P. similiter Ad, &c.

Covenant.
Repl.

Vide Rast. Ent. 134.

Al Parr' in Covenant pur default des
Reparations.

Et p̄red' J. in ppz' pson' sua ven' &
defend' vim & injur' quando, (&c.)
Et dic' qđ p̄dia' T. W. (Action non)
quia dic' qđ post dimission' messuagii
p̄dia' cum p̄tin' eidem J. p p̄dia' T. W.
patrem in forma p̄dia' fact' ac anteqm
messuagium illud dirutum sive ruinosum
fuit scilicet 27 die Martii Anno Reg-
ni Domini Regis nunc 17 apud J.
p̄dia' in Parochia & Warda p̄dia' idem
J. concessit & assignavit cuidam G. J.
gen' Executor' Administrator' & Assign
suis messuagium p̄dia' cum p̄tin' ac
totum statum jus tictum & termin' an-
nozum p̄dia' J. W. de & in eisdem
adunc ventur' & inexistat' Virtute
quarum quidem concessio & assignatio
idem G. J. in messuagium p̄dia' cum
p̄tin' intrabit & fuit inde possessionat'
ipsoq; sic inde possels' existend' p̄dia' cum
p̄tin'

Def. pleads,
he had as-
signed the
House, and
that after-
wards it was
burnt, and
that it was
well repair-
ed before the
Bill exhibit-
ed.

Covenant. pertinē postea per magnū incendiū quod maximam partem Civitat' London' conflagravit & combussit combustum destruct' & totalit' dirutum fuit Quod in convenienti tempore post destructionem messuagii pred' & ante exhibitionem bille ipsius C. W. predia' scilicet primo die April' Anno Regni dicit Dñi Regis nunc 21 messuag' predia' cum pertin' bene & sufficient' re-edificat' reparat' supportat' fissent' & manutent' fuit cum necessis & necessar' reparacionibus & emendacionibus Et adhuc in bona & sufficient' reparacione existit juxta formam & effectum Judentur' pred' Et hoc, (Ec.) Unde, Ec.

Ed. Saunders.

Demurrer.

Plaintiff demurs: Et p causis eo quod p̄d' Jasperus non dicit per quem messuagium pred' re-edificatum fuit nec monstrat per plitum suum infra quod certum tempus messuagium predia' fuit re-edificatum post combustionem inde ita quod Cur' dic' Dñi Regis hic adjudicar' posset utrum fuit re-edificat' in convenienti tempore Et quia placitum est incertum negativum pregnans & caret forma.

W. Jones.

Defendant joyns in Demurrer: And the Plea was held ill, for not shewing by whom the Messuage was repaired, &c. *Vide 2 Saund.* 421, 422. where he adds Et ceo come jeo pense sans ascun consideration del matter

ter en Ley, le quel le Plea fuit fufficient Covenant
ou nemp.

Et p̄dict' J. p̄ J. W. Attoꝝ suū ven
t defend' vim & injur' quando, &c.
Et dic' quod p̄dict' C. D. actionem suam
p̄dict' inde vltus cum here non debet
quia dic' qđ p̄ced' R. C. in vita sua post
consecration' Indentur' supius p̄ximo men
tionat p̄stabit tot' p̄dict' tres domos
que dicto tempore consecration' ejusdem In
dentur' fuer' stant' & existent' sup dimissa
p̄missa & de novo erexit edificabit & ex
truxit sup dict' solium in eisdem loc' ubi
p̄dict' tres domus sic p̄sternat' sic fuerunt
stant' tres al' domus tante magnitudi
nis quant' p̄dict' tres domus sic p̄ster
nat' fuerunt qđq̄ idem J. C. a p̄dict'
tempore mortis p̄dict' R. C. de tempore
in tempus duran' toto p̄dict' termino vi
ginti & unius annozum bene & fufficient
reparabit sustinuit conserbabit & manute
nuit omnes ill' tres domus sic de novo
edificat' cum p̄tin' & tres domus ill' &
quamlibet earum sic bene & fufficient' re
par' fuffient' conserbat' & manutent' in fi
ne p̄ced' termini vigint' & unius annoz'
Cursum reddidit & reliquit scđm formam
Convention' p̄ced' in ea parte Et de hoc
pon' se super p̄riam Et quoad non repa
racon' paviamen' aree p̄dict' idem J. dic'
qđ ip̄e idem J. non p̄misit paviamen'
aree p̄dict' fore fract' dirupt' seu in decasu
pro defect' reparacon' inde nec paviamen'
& muros & aream querceam p̄dict' seu aliqua
partem inde fore fract' dirupt' seu in decasu
su

Breach for
permitting
one of the
new erected
Houses to
fall down be
fore the End
of the Term
and other
Defaults in
not repair
ing. Defen
dant pleads
Performance
specially to
each Breach
assigned, &c.

Covenant. In pzo defectu reparacon' inde ad finem p-
 dia' termini viginti & unius annor
 modo & forma put pzedic' C. superius
 versus eum queritur Et de hoc pon se
 sup pziam Et pzed' C. siliiter Et quoad
 pmiadon tegular' laterar' fenestre & mu-
 ron Cement' in Barracon pzed' mentio-
 nat' fore & esse fract' dirupt' & in decasu p
 defectu reparacon' Idem J. dicit qd ipse
 idem J. C. non pmitit tegulas lateras
 fenestras & muros Cement' pzed' seu ali-
 quam partem inde fore fract' dirupt' seu
 in decasu pzo defectu reparacon' inde nec p-
 tegul' lat' fenestras & muros Cement'
 pzed' seu aliquam partem inde fract' dirupt'
 seu in decasu pzo defectu reparacon' inde
 ad finem pzed' termini vigint' & unius
 annor' reliquit modo & forma put pzed'
 C. superius versus eum queritur Et de
 hoc pon se super pziam & pzed' C. sili-
 ter, (Ec.)

The Plaintiff demurs to the first Plea, upon
 which the Issue is tender'd and not taken, as
 follows :

Demurrer.

Et pda' C. D. alius die qd pda'
 plitum pda' J. C. quoad fraction' Con-
 vention' pda' in relinquendo ad finem
 pda' Termini 41 Annor' pzedic' domo
 super pzed' dimiss' pmiss' p pzedic' R. C.
 in vita sua post dimissio' pzed' sibi ut
 pzedic' fact' & dura' dimissio' ill-
 eret' psciat' consumpt' & totalit' ruinat'
 put idem C. D. alius supius inde nar-
 ravit supius in barram plitat' matiaq
 in

in eodem content' minus sufficien' in lege Covenant.
 existunt, (Ec.)

Defendant joins in Demurrer. *Vide 2 Ventr.*
pag. 124, 125.

Idem 128. The sole Question was upon this
 Covenant; The Defendant being obliged
 only to build three Houses, and having built
 one more, Whether the Covenant did not
 bind him to repair and deliver up that House
 well repair'd, as well as those which were a-
 greed to be built? And the Court were of
 Opinion, That the Covenant did extend to
 the other House, as well as to the three which
 were agreed to be built; for in the last Cove-
 nant, which is to deliver up well repair'd, 'tis
dicta premissa, ac domos & edificia su-
perinde fore erecta, which is general, and
 the rather to be taken, because in the first Co-
 venant for keeping in Repair during the Term,
 'tis the Houses agreed to be built, which
 Words (agreed to be built) are left out in the
 last Covenant, which the Court took to be a
 distinct Covenant; and Judgment was given
 for the Plaintiff.

Et p̄dicta C. p. J. H. Attorū suū ven-
 t̄ defend vim & injur' quando, (Ec.)
 Et quoad fr̄ctionem Conventionis p̄dicta
 de eo qđ Messuagium p̄dictū possit concel-
 sionem p̄dictam p̄stat S. G. Gen' inde in
 forma p̄dicta fac' durante vita ipsius S.
 & post mortem ipsius S. usq; p̄dicta diem
 impetr̄ationis h̄is Originalis p̄dicta N.
 scilicet nonum diem Aprilis anno Regni
 die Dom̄ Regis nunc sexta supradicta
 H h fuit

Bar.
 Def. respond al'
 quelque parti-
 cular, & die
 que nul part
 del mease &
 premisses sont
 hors de repair,
 & prist Issue
 sur quelque
 Breache

Covenant. fuit & adhuc discooperitū existit p defectu
 tegulationis inde per qđ grossum Maeres-
 miū ejusdem Messuagii per tempestates
 pluviales sup illē discenden' p defectu te-
 gulaōnis pđ per vim venti superinde af-
 fluctū puridum deven' & corrupt' ac Mel-
 suagiu illud rāone putredinis & cor-
 ruptōne illius ruine minatur Idem C.
 dic qđ Messuagium p̄dictū non discoo-
 pertum fuit p̄o defectu tegulaōnis p̄dictā
 contra formā & effectum Indenture p̄-
 dictā put p̄dict' H. per narracōnem suam
 p̄dictam superius suppon' Et de hoc pon'
 se super p̄iam & p̄dictā H. similiter Et
 quoad fracōn' Convencōnis p̄dictā de eo
 qđ fenestre vitree (Anglice the Glass Win-
 dows) totius Messuagii p̄dictā continen'
 sexagint' & sex pedes per totum tempus
 p̄dictā fuerunt frac' in vitriat' & in mag-
 no decasu p defectu vitraōnis & repa-
 racōnis (Anglice Glazing and Leading)
 eorundem ac p̄o eo qđ sex claustra An-
 glice Iron Casements) earundem fenestrarū
 extra easdem fenestras capē & ebuls'
 fuer' idem C. dicit quod p̄dictā fenestre vi-
 tree non fuer' frac' in vitriat' & in decasu
 p̄o defectu vitraōnis & reparacōnis (An-
 glice Glazing and Leading) earundem nec
 p̄dictā sex claustra (Anglice Iron Case-
 ments) earundem fenestrarū extra easdem
 fenestras capē & ebuls' fuer' contra for-
 mam & effectum Indenturē p̄dictā p̄out
 p̄dictā H. per narracōnem suam p̄dictā su-
 perius suppon' Et de hoc pon' se super
 p̄iam Et p̄dictā H. similiter Et quoad
 fracōn' Convencōnis p̄dict' de eo quod
 quatuor

Issue.

Issue.

quatuor magni Canales plumbei (Anglice Leaden Gutters) Messuagii pdia' cū
 Messuag' affix' cum aqueductibus (Anglice Spouts) eorundem per totum tem-
 pus supradictum fuer' fract' disrupt' & in
 magno decalu p defectu reparaōnis eo-
 rundem idem C. dic qđ pzed' Canales
 plumbei & aqueducti non fuer' fract' di-
 rupt' & in decalu contra formam & ef-
 fectum Indentur' pdia' put pdia' H. per
 Narracōnem suam pdia' supius suppon'
 Et de hoc pon se super priam Et pdia'
 H. similiter Et quoad fractionem Con- Iffue
 venconis pzed' de ea qđ mozustaco gipfi
 (Anglice the Plastring) totius Messuagii
 pdia' tam in interiori quam in exteriori
 parte ejusdm p tempus pdictum fuit fract'
 disrupt' & in magno decalu p defectu pla-
 sturacōnis inde idem C. dic quod pdia'
 mozustaco gipfi (Anglice the Plastring)
 Messuagii pdia' in partibus pdictis non
 fuer' fract' disrupt' & in decalu contra for-
 mam & effectum Indenture pdia' pꝛoue
 pdictus H. p Narracōnem suam pdictam
 superius suppon' Et de hoc pon se sup
 priam & pzed' H. silitur Itē quoad tri-
 and exitum istum qm pzed' al separat erie
 inter partes pzed' supius junct' pceptum
 est Dic qđ Venit' fac' (Ec.) Vid. Vidian's
 Entr. 122.

Covenant.

Barr.

*Que in main-
tain les pre-
misses en re-
pair durant le
Term & issint
repair fuer
surrender al
Plaint al
fine de Term.*

Et p^{re}d' J. B. p — Attorn suum
ben' & defend' vim & injur' quando,
(&c.) Et die (Necō non) Quia die qū
ipse bene & sufficient' tegulabit integuit
& argillabit omnia domos & edificia tunc
stau sup dimissis p^{re}missis & bene & suf-
ficient' manutenuit reparabit & custodibit
septimenta pomariorū gardinarū & attri-
orū eorundem p^{re}missorū acetiam bene &
sufficient' manutenuit reparabit & custo-
dibit Cancellam Ecclesie Parochialis de
D. p^{re}d' de tempore in temp' & ad omnia
tempora quoties necesse fuit durante
p^{re}d' termino septem annorum p Inden-
turam p^{re}d' concess' & omnia eadem tam
bene & sufficient' tegulat' integulat' argil-
lat' manutent' reparat' & custodit' in fine
termini p^{re}d' septem annorum sic reli-
quit & sursum reddidit p^{re}fato G. H. scōm
vim formam & effectum Indentur' p^{re}d'
Et de hoc pon' se sup p^{re}iam (&c.)

*Sur Count per
Lessee versus
Lessor quod ne
Repair.*

Barr.

*Et Isu sur
Reparation.*

A. Et p^{re}d' C. p — Attorn' suū ben'
& defend' vim & injuriam quan-
do, &c. Et die qū ipse bene & competen-
ter contra ventum & pluviam Tenemen-
tum p^{re}d' reparabit sustentabit & de-
fensibile fecit sumptibus suis p^{re}piis &
expens' durante anno elapso de termino
p^{re}d' Et de hoc pon' se sup p^{re}iam Et
p^{re}d' W. similiter Jō (&c.)

Plaintiff

Plaintiff shews for Breach, that H. S. Esq; having lawful Title, entered into the Tenements, and ejected the Plaintiff.

Et modo (Ec.) Accōd non (Ec.) Quia ptestando qđ eadem P. Convencon tuam Warrant' pđ a tempore levacōnis finis pđia' ex parte sua custodiend' huc usq; bene & fideliter custodivit ptestandoq; etiam qđ H. S. pđia' tempore intracōnis ipsius H. in Cēta pđia' non fuit aliquod legale jus aut titlum ad eadem Cēta cum ptinen' pro p'tito eadem P. dicit qđ pđia' H. S. ip'm J. a possessione & occupacōn ten'ton pđia' non ejecit expulit aut amovit put pđia' J. superius inde Usus eum narrabit Et hoc (Ec.) Unde (Ec.)

Defendant by Protestation that H. S. had no Right pro placito non Ejecit, &c.

(Quer' pcludi non) quia dic' qđ pđia' H. S. ip'm J. a possessione & occupacōn ten'ton pđia' ejecit expulit & amovit modo & forma put ipse idem J. supius inde Usus eam narrabit Et hoc per' qđ inquiratur p Patriam Et pđia' P. inde similiter (Ec.) Ideo pcept' est vic' (Ec.)

Repl'. Ejecit & Issue.

Verdict for the Plaintiff, and Sixty Pounds Damages; but afterwards Judgment arrested by the Court, for that the Breach was not well assigned, and a Nil capiat per Billam awarded against the Plaintiff; Vide 2 Saund. pag. 177, 181, &c. vide Mod. Intr. 209.

Covenant.

Breach.
For that the Defendant did not suffer the Plaintiff to make a Drain according to Covenant, Defendant pleads, that he permitted the Plaintiff to make a Drain according to Covenant, but he refused it.

ff. **E**t p̄dict' E. p̄ J. T. Attorn̄ suum venit & defendit vim & injuriam quando, &c. Et dicit quod p̄dict' W. T. accōnem suam p̄dict' R̄sus eum here non debet Quia dicit quod p̄dict' passagium dictis p̄missis p̄lat W. dimissis ptinens est scituale in p̄dict' Parochia Sed Jacobi Westm̄ p̄dict' & ducit a p̄dict' domo p̄lat W. ut p̄fertur dimissis usq; ad Six-Bell Yard p̄dict' in p̄dict' Parochia Sed Jacobi Westm̄ quodq; quoddam Aqueductale (Anglice a Drain) ad aquam vacuum (Anglice the waste Water) a dictis Dom̄ in p̄dict' magnam Canalem fossam (Anglice Main Shoar in Six-Bell-Yard) p̄dict' abducendū in & per passagium p̄dict' convenient' fieri potuit & potest quodq; ipsa eadem E. post consecrōn̄ dimissionis p̄dict' p̄lat W. ut p̄fertur factō scilicet p̄dict' decimo sexto die Novembr̄ anno Regni dicti nup̄ Regis Jacobi quarto supra dicto apud Parochiam Sed Margarite Westm̄ p̄dict' p̄missit & libertatem dedit p̄lat W. ad ejus onera & custagia facere Aqueductale in & p̄ passagium p̄dict' ad aquam vacuum a dictis Dom̄ in p̄dict' magnam Canalem fossam in Six-Bell-Yard p̄dict' abducendū p̄ qd̄ idem W. Aqueductale ill' in & p̄ passagium p̄dict' ad libitum suum facere potuisset si voluisset sed hoc facere penitus recusavit Et hoc parat' est verificare Unde petit iudicium a p̄dict' W. accōnem suā p̄dict' & R̄sus eam here debeat, &c.

The Plaintiff demurs generally, and the Defendant joins in Demurrer: And it was argued, that this Plea was insufficient; for when the Defendant covenanted, That the Plaintiff should be permitted to make a Drain from the demised Premises to *Six-Bell-Yard*; he was at his Election to make it through any Part of the Defendant's Ground, that lay between, tho' the Ground was built upon, (and so might be inconvenient for the Defendant) and tho' there might be another Place to make the Drain in, and cited the Cases of Election: As where a Feoffment is made of twenty Acres of such a Wood, &c. The Defendant may take which Twenty he will in any Part of the Wood.

But the Court were rather inclin'd, That in this Covenant there should not be Election to make the Drain thro' the Parties Stables, or Building, in case there were other Places proper and convenient to make the Drain in; for every Agreement must have some reasonable Construction that may be consistent with the Intent of the Parties. But no Opinion was delivered as to this Point, because there were divers Exception taken to the Declaration, some of which were fatal. *Vide 2 Vent. 272, 278.*

ff. **E**t p̄dia' C. p. — Attor̄n suum ven
Et defendi vim & injur' quando, &c.
Et dic qđ p̄red' S. accōnem suam p̄dia'
inde filius eum here seu manutenere non
debet quia dic quod post sigillacōnem &
consecōnem Indenture p̄dia' in Parra-
con p̄dia' sup̄ius specificat & usq; festum
Sed Michis Archie anno Regni Dom̄
Willi tertii nunc Regis Angl, &c. septi-

H h 4

Barr,
Per Peform-
ance del Cove-
nants usque
tiel temps,
Et que denq;
un Seignier
ayant priorme-
lieur Title di-
mist alteri
qui ejecit Des-

mo

Covenant. mo ipse idem C. pformabit omnes & singulas Convenciones & soluciones ex parte ipsius C. pformans secundum vim formam & effectum Indenture predicta. Et hoc parat est verificare, &c. Et idem C. ulterius die quod post sigillacionem & consecucionem Indenture predicta scilicet nono die Junii anno Regni dicti Dni Regis septimo supradicto quidam Johannes Dominus Rols Baro de Hacton (bens priorem & meliorem titulum ad premissa in Indentura predicta specificat & dimissit facit C. apud N. predicta dimissit concessit & ad firmam tradidit predicta. Censa cum primis in Indentura predicta mencionat (inter alia) cuidam W. C. M. hendi & tenendi Censa predicta cum primis facit W. C. & Assign suis a vicelesimo nono die Maii tunc ultimo preteritis usque plenum finem & terminum quinque annorum ex tunc per sequens & plenarie complendi & finiendi virtute cuius quidem dimissionis idem W. postea & post festum Sed Michis Archi per in anno septimo supradicta scilicet primo die Nov' anno septimo su die apud N. in Com predicta in Censa predicta cum primis intrabit & ipsum C. a firma sua predicta eiecit expulit & amovit & ipsum C. a possessione sua inde & hinc virtute dimissionis ipsius Johis Dom Rols extratenuit & adhuc extratenet Et hoc parat est verificare Unde per iudicium si predicta S. accionem suam predicta inde solus cum here seu manutenere debeat, &c. Vid. Bro. Red. 158.

N. Et

A. **E**t predicta W. W. p Altorum Covenant.
 suu' ven' & defend' vim & injuria Sur Bargain
 quando, &c. Et dic' qd' predicta C. B. filius and Sale port
 accõnem suam p'dicand' filius eum here per l' Heir vers
 non debet quia dic' qd' bene & verum est un del Cove-
 qd' predicta J. B. ante consecrõnem Inden- nantors.
 ture pred' fuit seistus de & in predicta par- Bar.
 cels' terre (vocat' Perryfield) ac de predicta Confesse le De-
 parva Grobett' vel bosco eidem adjacen- vise pur vie,
 in Indentura predicta superius specificat' in le remainder
 Dñico suo ut de feodo & ill' tenuit de en tail.
 pred' R. Comite S. ut de predicta Maner-
 rio suo de Wimbish-Hall in libero loca-
 gio videt' p fidelitatem tantu' ac sic inde
 seist' existens predicta tertio decimo die
 Januarii anno Regni, (&c.) tricesimo ter-
 tio apud London' in Paroch' & Warda
 pred' condidit testamentu' & ultimam
 voluntatem sua in scriptis & per eandem
 voluntatem sua voluit & legavit predicta
 parcelle terr' vocat' P. & Grobete sive
 Boscu' pred' p'fat' J. B. filio suo pro ter-
 mino vite ipsius J. B. filii Et quod post
 decessum ipsius J. B. filio pred' parcelle
 terre vocat' P. & Grobett' predicta rema-
 nerent p'fat' J. B. filio pred' J. B. filii
 & hered' masculis de corpore ipsius J.
 filii J. patris legitime p'creat' quodq;
 pred' J. B. abis postea & ante consec-
 rõnem Indenture pred' apud W. predicta
 obiit de tali statu suo inde seist' quodq;
 predicta J. B. pater post mortem ejusdem
 J. B. abi in pred' parcelle terre vocat' P. Le demise del
 & Grobett' sive Boscu' pred' eidem adja- Tenant pur
 cend' intravit & fuit inde seistus in Dñico vie a un auter.
 suo ut de libero tenito p termino vite sue
 virtute

Covenant. virtute legaçonis predia' remanere inde post ejus decessum p̄fat' J. B. filio & hered' Masculis de corpore suo exeun' spectan' Et sic inde seisit' existens idem J. B. pater p̄d' primo die Augusti anno Regni (Ec.) tricesimo tertio supradicto dimisit p̄fat' H. H. predia' parcell' vocat' P. & Gzobett' sive Boscu' p̄dia' eidem adjacent' cum ptinen' habend' & tenend' eidem H. & Assign' suis durant' vita naturali ipsius J. B. patris Eodq' p̄dia' H. virtute ejusdem dimissionis fuit seisit' de p̄dia' parcell' terre vocat' P. & Gzobetta sive Boscu' p̄dia' eidem adjacent' cum ptin' in Dñico suo ut de libero tenito p termino vite p̄d' J. B. patris remanere inde post ejus decessum p̄fat' J. B. filio & heredib' Masculis de corpore suo exeun' sic ut p̄fertur spectan' Et sic inde seisit' existens idem H. p̄dia' decimo die Augusti anno Reg (Ec.) tricesimo tertio supradicto apud London' p̄dia' in parochia & warda p̄dicta' dimisit p̄fat' R. W. p̄d' parcell' terre vocat' P. & Gzobettam sive Boscu' p̄dicta' eidem adjacent' cum pertin' habend' & tenend' eidem R. W. & assign' suis ab eodem decimo die Augusti p duobus annis integris tunc primo sequen' & plenarie complend' & finiend' qd'q' idem R. W. virtute ejusdem dimissionis in p̄dia' parcell' terr' vocat' P. & Gzobettam sive Boscu' eidem adjacent' cum ptin' intravit & fuit inde possessionat' Et sic inde possessionat' existens idem R. W. p̄dia' primo die Septembris anno Regni (Ec.) tricesimo tertio supradicto de p̄dia' parcell' terr' vocat' P. & Gzobett'

*Le demise per
2 Annis al un
des Covenant-
tors.*

bett sibe Bosco p̄dia' eidem adjacēd cum
 p̄tin' feoffagit eundē W. W. hēd' & te-
 nēd' eidem W. herēd' & amīd' suis im-
 ppetuum qd'q' idē W. W. virtute ejus-
 dem feoffamenti fuit seisi' de p̄dia' par-
 cell' terre vocat' P. & Grovett sibe Bosco
 p̄dia' eidem adjacēd cum p̄tin' in Dñico
 suo ut de feodo put dia' J. B. filius per
 Narracōd suam p̄dicam supius suppon
 Sed idē W. W. sic inde seisi' existēd
 p̄dia' J. B. pater per nomen J. B. de
 Windish in Com' Essex Peoman filii &
 herēd' J. B. nup de W. p̄dia' Peoman
 defunct' ante confectiōem Indenture p̄-
 dia' hic in Cur' plat' scit' tertio decimo
 die Octobris anno Regni (Ec.) tricesimo
 tertio supradico apud W. p̄dia' p quod-
 dam scriptū suū relaxatiōis qd' idē
 W. W. sigillo p̄dia' J. B. patris signat
 hic in Cur' p̄fert cujus dat' eisdem die &
 anno remisit relaxabit & omnino p se &
 herēd' suis quiete clamabit eidem W. W.
 in plena & pacifica possessione existēd to-
 tum jus statum titulum clameum usum
 interesse & demand' quecunq' que idē J.
 tunc habuit seu quovismodo here potuit
 de & in p̄dia' parcell' terre vocat' P. &
 p̄dia' Grovetta sibe Bosco eidem adjacēd
 cum p̄tin' ac de & in qualibet inde parcell'
 ita videt' qd' nec p̄dia' J. B. pater nec
 herēd' sui nec aliquis alius sibe aliqui
 alii p eos vice vel nominibus eorū vel a-
 licujus eorū aliquod jus statum titulum
 clameū usū possessionem reversionem vel
 demand' quecunq' de & in p̄mis aut de
 & in aliqua inde parcell' de cetero exigere
 clamare

Covenant.
 Et le Feoffa-
 ment del Lessee
 pur ans al Def.
 l'auter Cove-
 nantor.

Mes les Def.
 ouster dit que
 le dit primer
 Devisee pur
 vie esteant
 heire, release
 a luy, &c.
 ove garr'.

Covenant. clamare seu vendicare potuissent nec deberent sed ab omni actione juris status tituli clam̄ usus & demand̄ inde petend̄ sive exigend̄ totaliter forent p̄clusi imperpetuum Et p̄dict̄ J. B. & hered̄ sui p̄dict̄ parcelle terre vocat̄ P. & Grobette sive Boscum p̄dict̄ eidem adjacent̄ cum p̄tin̄ eidem W. W. hered̄ & assign̄ suis ad solū & p̄p̄iū opus & usum ipsius W. W. hered̄ & assign̄ suorum contra omnes gentes warrantizarent & imperpetuū per idem scriptum relaxationis defenderent put p̄ idem scriptum relaxationis inter alia plenius apparet Et idem W. W. ulterius dic̄ qđ eodem W. W. de p̄dict̄ parcelle terr̄ vocat̄ P. ac de Grobetta sive Bosco p̄dict̄ eidem adjacent̄ cum p̄tin̄ in Dñico suo ut de feodo in forma p̄dict̄ seisiu' existent̄ Indentura p̄dicta hic in Curplat' p̄dicto octavo die Julii Anno Regni (Ec.) tricesimo quarto suprad̄cto inter p̄dictos W. W. & R. W. ex una parte & p̄dict̄ T. B. patrem ex altera parte in forma p̄dicta fact̄ fuit posteaq; p̄dict̄ W. W. de p̄dict̄ parcelle terre vocat̄ P. & Grobette sive Bosco eidem adjacent̄ eum pertin̄ in forma p̄dicta seisiu' existent̄ p̄dict̄ secundo die Augusti anno Regni (Ec.) tricesimo quarto suprad̄cto de eadem parcelle terre vocat̄ P. & Grobetta sive Bosco eidem adjacent̄ eum p̄tinend̄ feoffavit p̄dict̄ T. B. patrem habend̄ & tenend̄ eidem T. hereditib; & assign̄ suis imp̄petuū virtute cuius Feoffamenti idem T. B. pater fuit seisiu' de p̄dict̄ parcelle terre vocat̄ P. & Grobetta sive Bosco eidem adjacent̄ eum p̄tin̄.

Le Def. issint
esteant seise,
l'Indenture
fuit fait.

Feoffament al
patr' del
Plaintiffe.

ptin' in Dñico suo ut de feodo Et sic inde Covenant.
 seisiť existen' idem T. B. pater obiit de
 tali statu suo inde seisiť post cuius mor- *Discent al*
 tem pđia' parcelle terre vocat' P. & Gro- *Plaintiffe.*
 betta sive Boscđ eidem adjacen' cđ per-
 tin' descend' pťat' T. B. jam Quer' ut fi-
 lia & heredi pđia' T. B. patris p qđ idđ
 T. B. jam Quer' in pđia' parcelle terre
 vocat' P. & Grobete sive Bosc pđia' ei-
 dem adjacen' cum ptin' intrabit & fuit &
 adhuc est inde seisiť in Dñico suo ut de
 feodo Aploq T. B. jam Quer' sic inde
 seisiť existen' pđia' J. B. pater obiit post
 cuius mortem Warrantia pđia' descen-
 debat sup pđia' J. B. filio ut sup filio &
 heredi pđia' J. B. patris sicqđ idem W.
 W. dic qđ ipse pđia' tempore sigillatio-
 nis & deliberationis Indenture pđia' hic
 in Cur' plat' fuit & stetit seisiť de & in
 pđia' parcelle terre vocat' P. & Grobetta
 sive Bosc eidem adjacen' cum pertin'
 de bono certo pťecto & indefesibili statu
 feodi simplicis absolut' absqđ aliqua Con-
 ditione qđqđ idem W. tunc habuit plenam
 & legitimam potestatem & auctoritatem
 dandi concedendi barganizandi venden-
 di assurandi & alienandi pđia' parcelle
 terre vocat' P. & Grobete' sive Bosc pre-
 dia' eidem adjacen' cum pertinentiis &
 quamlibet partem & parcelle pmissor p
 Indentur' pđia' barganizat' & vendit'
 dicto T. B. patri heredibus & assignat'
 suis modo & forma ut pantea in Inden-
 tura pđia' fuit recitat' & expressat' scđm
 formam & effectum Indenture illius Et
 hoc paratus est verificare Unde petit ius
 dicium

*Le Garrantie
 descend' sur
 Tenant en tail,
 Et issint le
 Def. dit que il
 fuit seise d'un
 perfect Estate
 de Fee-simple,
 & ad poiar
 a vender.*

Covenant. *dictum si p̄dix' C. B. jam Quer' actionem suam p̄dix' versus eum here debeat, &c.*

Vide Co. Ent. 112, 113.

Breach for Non-payment of Rent. Defendant confesses Part, and to other Part pleads, that he assigned over before any Rent due, &c.

ff. **E**t p̄dix' C. p. M. P. Altoꝝ suum ven' & defend' vim & injur' quando, &c. Et quoad fraction' convencon' p̄dix' in non solucon' duodecim quart' utr' Vini Hispanici parcell' p̄dix' viginti & quatuor utr' in Narr' p̄dix' superius spec' p uno anno finit' ad decimū diem Maii anno Dñi (&c.) & vigint' libz' de p̄dix' sexagint' libz' parcell' que debener' aretro insolui' p dimidū unius anni finit' ad festum Annunciacon' be Marie Virginis anno Regni Dñi Regis nunc septimo supradicto idem C. die qđ ipse don potest dedicer' action' p̄dix' H. inde p̄dix' nec qđ ipse Convention' p̄dix' in ea parte qđ ille duodecim quart' utr' Vini Hispanici ac p̄dix' vigint' libz' infregit in forma qua idem H. p narracon' suam p̄dix' supius suppon' Et quoad fraction' Convention' p̄dix' in non solucon' duodecim quart' utr' Vini Hispanici resid' p̄dix' vigint' & quatuor quart' utr' Vini Hispanici necnon in non solvend' quadragint' libz' de p̄dix' sexagint' libz' resid' in Narr' p̄dix' spec' idem C. die qđ p̄dix' H. actionem suam p̄dix' inde solus eum here non debet quia die qđ ante iidem duodecim quart' utr' Vini Hispanici aut aliqua parcell' inde aut eadem quadragint' libz' p reddit' tenement' p̄dix' cum pertin' vel aliqua inde parcell' debener' debet aretro seu solubile scilicet

scilicet decimo quarto die Junii anno Reg- Covenant.
ni Dñi Regis nunc septimo supradicto
apud Paroch in Com^o pdict' ipse idem C.
concessisset & assignabit cuidam J. M. de
London' Gen' statum titulum interesse &
termin' annor^{um} que idem C. adtunc huc
ventur' de & in censuris pdict' cum pertin'
virtute cujus quidem assignacon' idem
J. M. postea scilicet eidem die & anno in
tenement' pzed' cum pertin' intravit & fuit
& adhuc est inde possessionat' p resid' pzed'
termini supius in Parr' pzed' spec' & hoc
parat' est verificare Unde petit Judicium
si pzed' H. actionem suam pzed' inde ver-
sus eum here debeat &c.

Et pzed' C. dicit quod plitum pzed' C. Demurrer,
quoad fracton' Convention' pzed' in non
solucon' pzed' duodecim quart' utr' Vini
Hispanici resid' pzed' viginti & quatuor
quart' utr' Vini Hispanici necnon in
non solvend' pzed' 40 l. de pzed' 60 l. resid' in
Parr' pzed' specificat' superius in barram
plitat' materia^{rum} in eod' content' minus
sufficien' in Rege existunt (&c.

Defendant joins in Demurrer.

The sole Question was, Whether the De-
fendant ought to have given Notice to the
Plaintiff of the Assignment.

Et adjoznatur. *Vide 2 Ventr. 228, 234.*

Defendant pleads a Surrender of the Term,
and Acceptance of the Plaintiff. *Vide antea.*

Repl', Non sursum reddidit.

A]

Covenant.

Al' Narr' in Covenant to make Account, and to pay a Moiety of the Monies received.

Def. pleads, that he disbursed the Money about Reparations and other necessary Charges.

Action' non (Et.) Quia dic' qđ bene & verū est qđ ipse idem A. recepit p̄d' 800 l. de p̄ficiis & emolument' surgen' e statu p̄d' B. W. Bar' Sed idem A. ulterius dic' qđ ante recepcōnem p̄d' 800 l. scilicet 17 die Maii anno Regn' dēd' Dñi Regis nunc 18 supradicto apud A. p̄d' in Paroch' & Warda p̄dicta' ip̄ idem A. expendit & erogabit in & circa reparacionem p̄missoy' p̄d' in Articulis p̄d' superius menconat' & alia onera necessar' summam 800 l. & 10 l. per qđ idem A. p̄d' 800 l. sic ut p̄ferit' per ipm̄ recept' in manibus suis retinuit erga satisfactionem p̄d' 800 l. & 10 l. sic ut p̄fertur per ipm̄ expens' & erogat' & racōne inde non reddidit aliquem computum eidem A. & C. Et hoc (et.) Unde (et.)

Quer' moxante in lege Et Def' jung' in moxat'.

* This Plea was held ill, for the Defendants not shewing what those necessary Charges were. *Vide 1 Saund. pag. 45, 49.*

Et p̄dict' C. W. p. — Attornd suum Covenant.
 veni & defend vim & injuriam quan- Al Count sur
 do, &c. Et petit auditum p̄dict' Inden- Charterparty
 tur' in Narracō p̄dict' supius specificat' & Breach Af-
 & ei legitur in hec verba ff. This Writng signe que les
 indented, made, (&c.) qua Indentura lecta Bills d'Es-
 & audita idem C. W. dicit qđ p̄dict' J. S. change ne fu-
 actionem suam p̄dict' inde filius eum here eront paies ac-
 seu manutenere non debet quia dicit qđ cordant al Co-
 ipse idem C. W. post confectionem In- venant.
 denture p̄dict' & ante decessum ipsius C. Bar.
 ab Anglia erga p̄dict' Insulam de Ma- Def. per Oyer
 dera in Indentura p̄dict' supius specifi- del Indemure
 cat' scilicet vicesimo quinto die Maii anno & puis plede
 Regni die Dñi Regis nunc sexto apud qu'il addeposite
 London p̄dict' in Paroch & Warda p̄dict' & relinque les
 p ordinem & mandat' ipsius J. S. depo- deniers en
 suit & relinquebat summam ducentarum mains del'
 librarum sterling in manibus p̄fati H. P. tierce person per
 in Indentur' p̄dict' supius nominat' in l'Order & par
 plenam solutionem denariorū qui forent l'use del'
 debet p vino fore deliband' virtute & ra- Plaint' accor-
 tione Indenture p̄dict' scdm formam & dant al sa Co-
 effectum Conventōn' ipsius C. W. in ea venant.
 parte p̄dict' fact' Que quidem ducent libze
 tempore depositionis earundem sic ut pre-
 fertur fact' huc usq remanser' & adhuc
 remanet in manibus p̄fati H. P. ad usum
 p̄dict' J. S. videlicet apud London p̄dict' in
 Parochia & Warda p̄dictis Cum hoc qđ
 idem C. verificare vult qđ p̄tium vinorū
 p p̄fati J. eidem C. bargainizat & vendit
 non exced' p̄dict' summam ducentarum li-
 brarum Et hoc ipse idem C. W. par' est
 verificare unde petit iudicium si p̄dict'
 I i J. S.

Covenant. *I. S. actionem suam predicta' inde versus ipsum T. here seu manutenere debeat, &c.*

Breach for Non-payment of Money upon agreement for a Lease. under a Rent and Covenant. Def. pleads *quod Testator nichil habuit in Tenements.*

E T predicta' S. p T. W. Attorn suu vendit & defendit vim & injuriam quanda, &c. Et dicit qd predicta' C. T. J. B. & G. M. actionem sua predicta' inde versus eum here seu manutenere non debent quia dicit qd predicta' W. C. defuncta' predicta' tempore quo supponitur predicta' conventionem fieri nec unquam postea nichil fuit in Tenementis predicta' p ipsum W. scriptum agreementi predicta' sic ut prefertur dimitti agreeatum Et hoc parat' est verificare unde petit iudicium si predicta' C. T. J. B. & G. M. actionem suam predictam inde versus eum here seu manutenere debeant, &c.

To this the Plaintiff demurred : And Judgment by the whole Court was given for the Plaintiff; for though that may be pleaded in an Action of Debt for Rent, yet it cannot be pleaded in Covenant for a Sum in Gross; besides, that the Agreement does not necessarily import, that the Lease should be made by the Plaintiff. It may be understood that it was agreed, he should procure a Lease for the Defendant. *Vide 2 Ventr. pag. 99.*

Breach. Assign' pro non solucio' denariorum. Bar. Qd' Def solvit denaries.

E T predicta' S. p (Tc.) Quando (Tc.) & prestando quod nulla talis concessio sive dimissio dictarum decimarum in Parr' predicta' supius specificat' unquam transacta' fuit qualis in Articulis predicta' fore transacta' mentionatur p placito idem S. dicit quod

quod ipse ad sigillacoem articuloꝝum pꝛe- Covenant.
dictoꝝum solvit pꝛefat' C. pꝛedia' summam
trigint' libꝛaz' scdm formam & effectum
Articuloꝝum ill' videlt apud London' pꝛed'
in Paroch' & Warda pꝛed' Et hoc par est
verificare, &c. Unde, &c.

(Pꝛecludi non, &c.) Quia die qũ idem
S. ad sigillacoem articuloꝝum pꝛed' non sol-
vit pꝛefat' C. pꝛedia' summam trigint'
libꝛaz' scdm formam & effectum Articu-
loꝝum ill' modo & forma put pꝛed' S. supe-
rius pꝛitendo allegabit Et hoc petit
quod inquiretur pꝛ pꝛiam Et pꝛedia' S.
similiter &c. Iñ ven' inde Jur' coꝝam
Dño Rege apud Westmon' die Veneris
pꝛ' post Crastin' Scd' Trin' Et qui nec,
&c. Ad recogn' &c. Quia tam, &c. Idem
dies dat' est partibus pꝛed' ibm, &c.

Repl'.

Mue.

Et pꝛed' N. p . . . Ven' &c. Et die
qũ pꝛed' C. non requisivit ipsum N.
ad sigilland' & ut factum suum deliband'
pꝛed' C. pꝛed' scriptum relaxationis pꝛo
ultiori assuranca est pꝛed' cum pꝛed'
pꝛed' C. fiend' put pꝛed' C. per narracon'
suam pꝛed' superius suppon' Et de hoc
pon' se sup pꝛiam (&c.)

Ad Narr' su-
per Convenc'
ad fac' ulte-
rior' assuranca
super requisi-
con.

Bar.

Per non requi-
sivit.

*Note, There are many Bars relating to
Lands, and the Covenants in Indentures
and Articles, which properly come under
the Title of Debt, by reason they are
pleaded to Conditions of Bonds, &c.*

Covenant.

As Bar { to Conditions for assuring of
Lands.
for quiet Enjoyment.
to be free from Incumbrances.
for Non-payment of Rent.
for not repairing Houses, and
for not doing other Things relating to Lands, and
by Conditions and Covenants performed generally, &c.

Therefore we will treat of them under the Title of Debt, and only add two or three such Precedents here for Example's sake.

Note, That the whole Head of Covenant and Conditions to perform Covenants, are recapitulated and fully answered to all manner of Precedents, &c. in the Beginning of the 4th Part of *Instructor Clericalis*, to which I refer you; so that 'tis needless to add any Thing more here by way of Reference on that Subject.

Bar per performans del Condition.

Prist a faire lui sure del terre, &c. si fait require.

Et pꝛeꝛ G. per, &c. Attorn' suum ven' (&c.) quando, (&c.) Et petit auditum scripti pꝛeꝛ & ei legitur, &c. petit etiam auditum Condition' ejusdem scripti & ei legitur in hec verba Conditio (&c.) Quibus lectis & auditis idem G. dic qđ pꝛeꝛ R. actionem suam pꝛeꝛ filius eum here non debet quia dic qđ pꝛeꝛ G. pꝛeꝛ tempore conventionis scripti pꝛeꝛ usq; pꝛeꝛ Quinden' Pasche semper parat' fuit ad faciendū pꝛeꝛ R. Hered' & Attorn' suos secur' de omnibus terris

terris & tenentis predicta per visum Consilii Covenant.
 predicta R. ad sumptus ejusdem R. si idem
 G. per placitum R. vel Assignum suum ad hoc fuisset
 requisitus secundum formam Conditionis predictae
 & etiam idem G. omnia cartas & munimenta
 terras & tenentia predicta tangenda que in
 manibus suis tempore confectionis scripte
 predicta extiterint eidem R. apud S. predicta
 die (Ec.) Anno (Ec.) deliberabit secundum
 formam & effectum ejusdem Conditionis Et
 hoc parat' est verificare unde petit Iudici-
 um si predicta R. actionem suam predicta G.
 eum here debeat Ec.

*Il deliv' les
faits.*

Et predicta R. dicit quod ipse per aliquam pal-
 legat ab actione sua predicta habendum precludi
 non debet quia protestando quod predicta G.
 non deliberabit eidem R. cartas & munimenta
 nec aliquem vel aliquod inde seu
 eorumdem per plito dicit quod ipse idem R. die
 Martis proximo post Natale Domini Anno (Ec.)
 apud S. in Com predicta requisivit predicta G.
 quod veniret usque G. coram J. B. uno Ius-
 tic Domini Regis de Banco ad cognitionem
 coram eodem J. B. de tenentis predicta G. per
 visum Consilii ipsius R. in forma juris
 ut finis inde ad usum ipsius R. & Heredes
 suos levare potuit faciendum & obtulit ei-
 dem G. sex solidos & octo denar' per sumptus
 suos in itinere illo faciendum & idem
 G. ibidem hoc facere recusavit contra for-
 mam Conditionis predictae Et hoc parat' est
 verificare Ec. Unde petit iudicium & de-
 bitum suum predicta una cum dampnis suis
 occasione detentionis debi illius sibi adjudi-
 cari, Ec.

*Repl.
Protestando.*

*Il require luy
a lever fine &
il refuse.*

*Il obtulit 6s.
8 d. pro sumptus
in itinere.*

Covenant.
*Il ne offer le
 Money pur les
 Costs & Issue
 sur ceo.*

Et pꝛed G. non cognoscend' aliqua p
 pꝛed' R. lupius allegat dicit quod
 idem R. non obrulit pꝛefat' G. pꝛed' sex
 solidi & octo denar' p sumptibus suis in
 itinere suo a pꝛia' Villa de S. usqꝫ D.
 faciend' pꝛut pꝛed' R. lupius allegabit
 Et de hoc pon se sup pꝛiam Et pꝛed R.
 filiter, &c. Jo (&c.)

*Qd' Quer'
 quiete & paci-
 fice habuer' &
 gavis' fuer'
 bosc' maherem'
 & arbores
 absque inter-
 ruption' Def.
 secundum Con-
 dition', &c.*

Et pꝛed D. p &c. Attorꝫ suum vend &
 defend' vim & injur' quando, &c. Et
 pet' auditum scripti pꝛedia' & ei legitur
 pet' etiam Condition' ejusdem scripti & ei
 legitur in hec verba, The Condition, (&c.)
 Quibus lectis & audit' idem D. dic qd'
 pꝛed' W. G. & J. actionem suam pꝛedia'
 inde solus cum here seu manutenere non
 debent quia dic qd' pꝛed' W. G. & J. a
 tempore confectio' scripti pꝛed' usqꝫ diem
 exhibitionis Ville pꝛedia' W. G. & J.
 pꝛed' pacifice & quiete fuerunt ceperunt
 possiderunt & gavis' fuerunt vel here ca-
 pere possidere & gaudere potuerunt ad
 eorum pꝛia usus beneficia & opus (An-
 glice Behoofs) omnia pꝛedia' barganizae
 boscum maheremium & arbores scdm
 veram intentionem (Anglice Intent) &
 propositum pꝛed' scripti agreementi &
 pꝛed' scripti assignationis in Conditione
 pꝛed' mencōnat' Quod ipse pꝛia' D. seu
 pꝛed' J. R. in Conditione pꝛed' nominat'
 seu eorꝫ ali' vel eorꝫ seu alterius eorꝫ as-
 sign' a tempore confectio' scripti pꝛedia'
 usqꝫ diem exhibitionis ville pꝛedia' non
 impediverunt denegaverunt molestave-
 runt

runt disturbaverunt interturbaverunt Covenant.
 (Anglice interrupted) ejecer' (Anglice e-
 je&ed) expuler' sive contradixer' seu ali-
 qua alia psona seu aliqu alie psona que-
 eunq, licite impediverunt denegaverunt
 molestaverunt disturbaverunt intertur-
 baverunt ejecer' expuler' seu contradixer'
 p'dict' W. G. & J. seu eoz' aliquem pa-
 cis & quiete habere capere possidere &
 gaudere ad eoz' p'pria usus beneficia &
 opus (Anglice Behoofs) p'ed' bargainat'
 boscum maheremid & arbores scdm ve-
 ram intentionem & p'positum scripti a-
 greamenti & scripti assignationis p'dict'
 Et hoc parat' est verificare unde pet' judi-
 cium st, (Ec.)

Et modo ad hunc diem scilicet diem Defend'
 Veneris pr' post Crastin' Sc' prays Oyer
 Trinitatis isto eodem Termin' usq, qm of the Con-
 diem p'ed' J. f. huit licentiam ad Bil- dition which
 lam p'dict' interloquend' & tunc ad re- is to perform
 spond' Ec. coram Dño Rege apud Westm Covenants
 ven' tam p'ed' J. H. p' Attorn suum pre- contained in
 dictum quam p'ed' J. f. p' R. S. Attorn an Indenture.
 suum Et idem J. f. defend' vim & in Bar.
 jur' quando, Ec. Et petit auditum scripti Note, Inden-
 Obligatorii p'ed' & ei legitur, Ec. petit ture must be
 etiam auditum Indorsamenti ejusdem set forth by
 scripti Et ei legitur in hec verba, ff. The Def.on Oyer.
 Condition, (Ec.*) Quibus lectis & audi- 1 Keb. 6. 415,
 tis idem J. f. dicit qd p'dict' J. H. ac- 513.
 tionem suam p'ed' inde usus eum here Vide Moor. 3.
 seu manutenere non debet Quia dic qd pl' 9.
 p' Indenturam p'ed' in Conditione p'ed' Recital del In-
 supius spec' (fact' apud W. in Cond' p'ed' denture.

Covenant;

vicesimo die Martii anno Regni die Dñi
 Regis nunc septimo supradicti inter pre-
 dictum J. f. p nomen J. f. de W. in
 Com B. Gen ex una parte & pñ J. H.
 p nomen J. H. de C. in Com pdia', Fre-
 Mason, ex altera parte cujus Indentur'
 alteram partem Sigillo ipsius J. H. si-
 gillat' gerend dat' eidem die & anno idē
 J. f. [p & in cons qñ pdia' J. H. Exe-
 cutor' vel Amgn sui infra quinq' annos
 prim & immediate evenien' & sequen' dat'
 Indenture pdia' de novo faceret exigeret
 edificaret & strueret vel causaret de novo
 fieri erigi edificari & strui unam bonam
 & sufficien' Domum molendinar' sive fru-
 mental' molendinum foze molendinum
 aquaticum in & sup quoddam fundo sive
 pastur' pdia' J. f. in W. pdia' voc' vel
 cogn' per nomen de C. in tali loco pdia'
 fundi qual' ante sigillationem pdia' In-
 dentur' agreeat' fuit inter pdictum J. f.
 & pdia' J. H. eundem J. H. etiam ad fa-
 ciend omnes necessar' aquecursum jannas
 aquar' rupes & stagn' & singul' (voc' Sly-
 ces) & omnia al' necessar' tangen' & con-
 cernend' necessar' conveiant' aque eidem
 molendino vel molendinis (si contingeret
 eum edificare plur' quam unum) super
 & ad eorum ppria custia & onera in om-
 nibus sufficien' & competend' (maheremia
 ulmozum solummodo excepti) qñ semper
 esset invent' plac' & deliberat' pñat' J. H.
 Hered' Executor' vel Amgn suis p plac'
 J. f. Hered' Executor' vel Amgn suos
 infra domum in W. pñ sup raconabil'
 requisicon' inde fiend' plac' J. f. Hered'
 vel

vel Align'] suis demisset concessisset & Covenant.
 ad firmam tradidisset & p Indentur' pre-
 dia' dimisit concessit & ad firmam tradi-
 dit p'fat' J. H. omnem ill' p'dictum fundum
 & pastur' jacen' & existen' in III. p'dicta'
 voc' & nominat' p nomen de C. cum om-
 nibus p'ficiis commoditatibus & advan-
 tagiis quecunq' forent p'venien' crescen'
 surgen' renovan' & contingen' de in & sup
 p'dictum fundum & pastur' & quamlibet
 part' & parcell' inde (umbrosis virgultis
 tunc crescen' & existen' sup p'dicta' terr' tan-
 tummodo except' & reservat' p'fat' J. f.
 Hered' & Align') que terr' & pastur' & p-
 mis' fuer' ad confection' Indentur' p'dicta'
 in tenura vel Occupacion' cujusdam C. H.
 de S. Hil' vel Align' suorum Et etiam
 dimisset concessit & ad firmam tradi-
 disse Et p Indentur' ill' dimisit concessit
 & ad firmam tradidit & posuit p'fat'
 J. H. omnia p'dictum molendinum & mo-
 lendina que forent de novo fieri exigi edi-
 ficari & frui ut p'dictum est & omnes
 Domos edificia & struatur' q' forent edi-
 ficari & frui ad & cum eisdem & omnia
 al' p'ficia commoditat' & advantag' q' fo-
 rent & possent p'venire crescere & fieri de
 p'dicta' molendino vel molendinis aque
 cursus eisdem spectan' & p'tin' videlicet a
 loco tunc vocat' W. usq' finem p'dicta' terr'
 una cum libero ingressu egressu & re-
 gressu in ad & a p'dicta' terr' & pastur' &
 molendinum & molendinis p'dicta' & om-
 nibus aque cursibus que eis p'tinerent
 p'fat' J. H. & famulis & Align' suis
 cum omnibus carriagiis suis que forent
 cum

*Demise de Mo-
 lyn ove tous
 profits & ad-
 vantages, &c.*

Covenant. cum equis carucis vel bigis obserban' usual' vias ducen' ad p'fat' terr' voc C. habend' & tenend' p'dict' terr' vel pastur' voc C. & molendinum vel molendina superinde edificari & strui ut p'dictum est & omnia al' p'missa p'dict' & quamlibet partem & parcell' inde, except' p'cept' p'fat' J. H. Execut' Administrat' & Assign' suis a festo Annunciationis beate Marie Virginis prim' sequen' post dat' Indentur' p'dict' usque finem & terminum viginti & unius annorum extunc prim' & immediate sequen' plenar' complend' & finiend' reddend' & solvend' inde annuatim duran' toto p'dict' termino p'fat' J. H. hered' & assign' suis sumam trigint' librar' bone & legis monete Anglie ad duos terminos vel festi anni maxime usual' videlicet ad festa Scd Michis Archi & Annunciationis beate Marie Virginis p' equal' portiones Et si contingeret p'dict' Annuat' reddit' trigint' librarum retro fore insolut' in parte vel in toto ultra vel post aliquem termin' vel festu' solutionis inde p'dict' in quo solvi debeat p' spatium unius mensis & tunc minime solui' existen' legitime requisit' & demand' & null' sufficiens' district' habend' nec inveniend' in & suo p'missis vel aliquam partem vel parcell' inde q'd tunc & quolibet die tunc deinceps bene liceret p'fat' J. H. Hered' & Assign' suis in omnia p'dict' terr' & pastur' & p'missis p'ceantea p' Indentur' dimiss' & concess' & quamlibet partem & parcell' inde totaliter reintrare & ill' rehabere retinere reposidere & gaudere ut in ejus
vel

vel eorum priorum Stat' Et p'dia' J. H. Covenant.
 Hered' Executor' & Assign' suos inde pe-
 nitus expelli ejici & amoveri p'dia' In-
 dentur' vel aliquo in eadem content' in
 contrarium inde in aliquo non obstan' Et
 p'd' J. H. convenisset promississet & con-
 cessisset p se Executor' Administrator' &
 Assign' suis ad & cum p'dia' J. H. He-
 red' & Assign' suis p Indentur' p'diaam
 modo & forma sequen' videlt qd ipse idem
 J. H. Executor' vel Assign' sui infra quin-
 que annos prim' sequen' post dat' Inden-
 tur' p'd' de novo faceret erigeret edifi-
 caret & strueret vel causaret de novo fieri
 edificari erigi & strui in p'd' terr' voc
 C. sup ejus & eorum ppz' custag' & onera
 unū bonum & sufficien' domum molendin'
 vel frumental' molendin' & faceret suffi-
 cien' & necessar' aque cursus ad agend'
 molendinum vel molendina ill' in loco &
 locis in usum illum appunctuat' (ut pre-
 dictum est) Et etiam ex ejus & eorū ppz'
 custag' bene & sufficient' repararent sup-
 portarent sustentarent manutenerent &
 custodirent tenabil' in omni genere re-
 parationis p'd' molendinum vel molen-
 dina & omnes domos edificia & structur'
 que forent ad ill' edificari & strui & om-
 nes januas aquarum rupes stagn' & sin-
 gul' vocat' Sluces que ullo modo specia-
 rent vel ptinerent p'd' molendin' vel
 molendinis quando & toties quoties o-
 pus postularet ducan' tota p'dia' Ter-
 mino Et etiam ex eorum sumptibus cu-
 stag' & oneribus ad faciend' custodiend'
 & reparand' omnes sepes fossa & clausa
 p'dia'.

Covenant. p̄dict' terr' vel pastur' toties quoties ne-
 cesse foret duran' toto p̄red' Termino &
 p̄red' molendinum vel molendina & omnia
 al' p̄missa p̄dicta' & quamlibet partem &
 parcell' inde existen' in & p̄ omnia sic bene
 & sufficienter reparat' sup̄portat' sustentat'
 manutent' & custodit' tenabil' in omni-
 mod' reparationib' in fine p̄red' Termin'
 relinqueret p̄fatar' J. F. Hered' & Assign'
 suis Et insuper qđ p̄red' J. H. Execu-
 tor' & Assign' sui & eorum quilibet exis-
 stens tenen' p̄missorum annuatim duran'
 toto p̄red' Termino posteaquā p̄red' mo-
 lendin' conficitur & edificatur molendina-
 rent libere absq; tal' omne tale feument'
 cuiusvis generis qual' p̄red' J. F. He-
 red' vel Assign' sui annuatim expenderent
 pro ejus vel eorum necessar' usu & Hospiz-
 talit' Manerio suo de W. p̄dicta' & non
 alibi Deniq; qđ si p̄fatar' J. F. in ppz'
 persona sua ad aliquod tempus impo-
 sterū postquam p̄red' molendin' vel molen-
 dina forent fact' & edificat' agrearet
 cum p̄red' J. H. Executor' vel Assign' suis
 pro eisdē qđ tunc ipse idē J. H. Execu-
 tor' vel Assign' sui sup' tali agreement'
 & composition' sic habit' & fac' deli-
 beraret p̄red' molendinum vel molendina
 p̄fatar' J. F. ad ejus ppz' usum & opus
 (aliquo p̄antea die in contrar' non ob-
 stan' Et scilicet qđ p̄dicta' J. F. Hered' &
 Assign' sui ad omnia tempora necessar'
 duran' p̄red' termino herent liberum in-
 gressum egressum & regressum in p̄red'
 terr' vel pastur' voc' C. ille vel illi temp'
 indemn' conferban' p̄dicta' J. H. Execu-
 tor'.

tor & Assign suos ab omni periculo & dampnū que evenirent contingere per eodem ingressū egressū & regressū Et predict' J. f. convenisset concessisset promississet & agreeasset p se Hered' Executor & Administrator suis & eorum quolibet ad & cum p'fat' J. H. Executor Administrat' & Assign' & eorum quolibet p' Indentur' p'ed' modo & forma sequen' videlicet qd' ipse idem J. f. Hered' & Assign' sui ad omnia tempus & tempora impofterū duran' toto p'ed' termino sup' qualibet rationabil' requisicione ei vel eis facta p' p'fat' J. H. Executor' vel Assign' proferet & deliberaret vel p'ferri & deliberari causaret p'fat' J. H. Executor' & Assign' suis infra domū de W. p'ed' sufficien' & competen' matheremū ex ulmis tam p' tanta nova edificacōn' quant' p'ed' J. H. Executor' vel Assign' placerent edificare & erigere in & super predict' terr' & pastur' qm' etiā p' necessar' reparacōne p' structur' Acceris allocaret & deliberaret p'fat' J. H. Executor' & Assign' ad omnia tempora necessar' infra domū de W. p'dict' super racōnabil' requisicōn' inde factam sufficien' & competen' ramos spinosas (Angl' Hedg-bote) p' confeccōn' custod' & reparatione sepium & claus' p'ed' terr' & pastur' duran' toto p'ed' termino aliquo superius dic' non obstan' Et deniq' qd' p'ed' J. f. Hered' & Assign' & quilibet eorum rotas p'ed' terr' & pastur' pantea p' Indentur' p'ed' dimiss' & concess' & quamlibet partem & parcelle inde p'fat' J. H. Executor' Administrat' & Assign' suis & eorum quilibet

Covenant. libet p annuall' reddit' trigint' libz' pzed' & sub & secundū al' convenções pantea recitat' contra omnes gentes quascunqz habentes clamantes vel pntendentes habere aliquod jus titulum vel interesse p ab vel subter pcedū J. F. vel heredi suos marcantizarent & defenderent durand to- to pdiā termino viginti & unius anno- rum p Indentur' pdiā put p Indentur' ill' liquet Et idem J. F. dic qd ipse bene & fideliter perfozmabit omnia & singula convenções concession' & articul' in An- dentur' specificat' ex parte sua obserbandū Et hoc parat' est verificare Unde petit iudiciū si pzed' J. H. accōnem suam pzediā inde vsus cum here seu manute- nere debeat, (Ec.)

Repl.

*Que il ne puit
enjoyer le mo-
lyn ove tous
profits & ad-
vantages &
monstre co-
ment.*

Et pzed' J. H. dicit qd ipse p aliqua p pzed' J. F. supius pfitando allegat' ab accōne sua pdiā versus ipsum J. F. habendūcludi non debet Quia protestan- do qd pdiā J. F. non pfozmabit perim- plebit seu custodibit aliquam convenção- nem concessionem Articulū sive agreea- ment in Indentur' pdiā ex parte pzediā J. F. obserband' perfozmand' seu perim- plend' p pfito tamen idem J. H. dicit qd post executionem pdiā molendin' ac facti- onem aque cursus ad impingend' (An- gllice to drive) molendinū pdiā secundū convenções & agreement' in Indentura pzediā content' p que aqua a tempore con- feccon' aque cursus usa fuit decurrere ad pdiā molendinū & idem molendinū im- pingere (Anglice to drive) pzediā J. F. postea scilicet vicesimo die Septembz.

Anno

Anno (Ec.) supradcto causabit & pcura= Covenant.
 bit pzed aquam sive aque cursum ad mo-
 lendin' pzed' ut pzed' est decurrent' cum
 quibusdam instrumentis (voc' Flakes, Hur-
 dles) & cespitibus (Anglice Turfs) ob-
 stupari per qd' idem J. H. omnia p'ficia
 comoditat' & advantag' que forent & pos-
 sent p'benire crescere & fieri de pzed' mo-
 lendino & aque cursu eidem spectan' &
 ptinen' juxta concession' & dimission'
 pdia' eidem J. H. p' p'edict' J. f. fact'
 here & gaudere non potuit Et hoc (Ec.)
 Unde, (Ec.)

Et p'edict' J. H. dicit qd' ipse non causa-
 bit aque cursum pzed' ad molendin' pzed'
 decurrent' obstupari modo & forma prout
 pdia' J. H. supius replicando allegavit
 Et de hoc pon' se sup' priam Et pdia' J. H.
 s'nter (Ec.) Ad ben' inde Jur' coram
 Dño Rege apud Westm' die Martis pr'
 post tres Septimanas Scd' Trinitatis
 Et qui nec (Ec.) Ad recogn' (Ec.) Quia
 tam (Ec.) Idem dies dat' est partibus
 p'edict' ibm (Ec.)

*Issue sur le
 Estopper del
 Watercourse.*

Et pdia' G. H. p' — Attorn' suu' ben'
 & defend' vim & injuriam quando,
 Ec. Et protestando qd' p'edict' Navis du-
 rante pdia' viagio non fuit fortis & sana
 scdm formam & effectum Indenture p'd'
 p' plito die qd' pdia' Hispanici seipsos
 contra pdia' Navem hostiliter non ten-
 derunt nec vi & armis eandem Navem
 tam vehementer aggressi fuerunt quod
 eadem Navis quietum comerciū ad In-
 sulam pdia' p' tempus pdia' here non
 potuit

Bar.

*Ad actionem
 sur Charter-
 party pro por-
 torio Navis pro-
 testando quod
 Navis durante
 viagio non fuit
 sana pro placi-
 to quod Hispani-
 ci seipsos con-
 tra Navem non
 tenderunt, &c.*

Covenant. potuit scdm formā & effectum Indenture
pout p̄dia' R. p̄ narrationem suam p̄-
dictam supius supponit Et de hoc ponit
se super Patriam Et p̄dia' R. aliter
Itē (Ec.)

I Bro. 127.

Ad actionem
sur Charter-
party d' Af-
freightment.

Bar.

Qd' Navis sup-
diem Limitat'
non parat' fuit
navigare, &c.
nec decessit,
&c. nec pro-
cessit, &c.

A Cō non Ec. Quia die qđ Nabis p̄-
dia' (vocat' le Sarah of Southampton)
p̄dia' decimo quinto die Octobris in Nar-
ratione p̄dia' supius menconat' apud Por-
tum de Southampton p̄dia' non parat'
fuit navigare abinde usq; Ribum (hoc
James River in Virginia) nec decessit abin-
de intento suo viagio directe ad p̄dia'
Ribum nec in eodem viagio processit
cum ea celeritate qua potuisset pout
ventus & aer deserviebant scdm formam
& effectum Charte-p̄rite p̄dia' Et hoc
pat' fuit verificare Unde (Ec.
Cl. Ass. 309, &c.

De conventionē
fract' sur Arti-
cul' agreamenti
concernen' con-
ditionem dua-
rum Navium.
Def. dic' qđ
ipse parat' fuit
ad computand'
cum Quer' &
travers qđ
Quer' parat'
fuit ad compu-
tand' cum ipso.

A Cō non (Ec.) Quia die qđ ip̄ idē
R. post p̄dia' redditum p̄dia' Naviū
a p̄dia' viagio ad p̄dia' Portum London
usq; diem impetrationis huius Ville
scilicet (tali die & anno) parat' fuit & ad-
huc parat' existit apud London p̄dia' in
Parochia & Warda p̄dia' ad computand'
iuste & vere insimul cum p̄fat' C. tanged
expens' p̄ oneris (Anglice the Freight)
& provisionis p̄dia' Naviū & omnium
al' expens' tangen' viag' p̄dia' sed idē C.
ad computand' cum p̄fat' R. concernen'
expens' oneris p̄dia' & provisionis p̄dia'
Naviū & omnium al' expens' tangen'
viag'

viag' p'dia' penitus recusabit & adhuc Covenant.
 recusat Absq' hoc q'd p'dia' C. post p'ed
 credit' p'dia' Naviu a p'dia' viagio par'
 fuit ad computand' insimul cum p'lat' R.
 tanged' expens' p'dia' oneris (Anglice
 Freight) & provisionis p'dia' Naviu &
 omniu al' expens' tanged' viag' p'dia'
 modo & forma prout p'dia' C. superius
 usus eum querit' Et hoc (Ec.) Unde (Ec.)
 See *Vidian* 138.

☞ See more of Covenant at the Beginning
 of the 4th Part of *Instructor Clericalis*.

*Some resolved CASES as to special Pleadings in
 Covenant.*

IN Covenant against an Assignee for not re- Breach for
 pairing a House: Defendant pleaded in not repair-
 Bar, an Accord between him and the Plaintiff, ing.
 and Execution of it in Satisfaction of the Re-
 parations. It was objected, That neither Ar-
 bitrament nor Accord with Satisfaction is a Bar by Ac-
 cord.
 Plea, when an Action is founded upon a Deed,
 because Matter *en fait* cannot be avoided by
 Matter in *Pais*; so when an Action is in the
 Realty, or mix'd with the Realty, Accord with
 Satisfaction is no Plea, and is not a Bar for the
 Personalty, but it was adjudged that the Plea
 was good: And a Difference was taken, where
 a Duty accrues by a Deed in Certainty, as by
 Covenant, Bill or Obligation to pay a Sum of
 Money; there because it takes its Essence by
 Writing, it ought to be avoided by Matter of
 as high a Nature: But when no certain Duty
 accrueth by the Deed, but a Default subsequent
 K k gives

Covenant. gives only Damages, there Accord with Satisfaction is a good Plea ; 6 Co. *Blake's Case*.

Vide 2 Keb. pag. 51. The Court held that an Accord is a good Plea to a Covenant to pay a Sum certain, or an Obligation when joined with other Things. But Concord after the Deed, cannot be a Bar to such Covenants as were not broken. 2 *Rolls.* 187, 188.

Def. pleads
Payment af-
ter the Day,
and ill.

Moved for a Repleader in an Action of Covenant to perform Articles and Payment of Money, whereto the Defendant had pleaded Payment of the Money after the Day, which the Plaintiff accepted ; and, because it was not pleaded by way of Accord and Satisfaction of the Covenant wherein Damages also are recovered, said to be ill. And this Issue being insufficient, and found for the Defendant, it's not aided by the Statute of *Jeofails*. And by *Twisden*, Payment pleaded to a single Bill, if found for the Plaintiff, he shall have Judgment; if for the Defendant, there shall be a Repleader, *sed adjournatur* 1 *Keb.* 210.

Vide 3 Cr.
455. pl. 2.

Goldsb. 106.
pl. 11.

But that the
House was
burnt by
Casualty.

In Covenant brought against a Lessee for Years, for not keeping the House in Repair. The Defendant pleaded in Bar, that the House was burnt by Casualty : It was holden to be no good Plea in Bar ; for that a Lessee that covenanteth to repair, ought to do it, be his House burnt by Negligence, or by any other Means ; *Styles* 162. *Compton* and *Allen's Case*.

Not good.

House re-
paired in
convenient
Time.

Defendant pleads the House was burnt, but repaired in convenient Time before Action brought. The Plaintiff demurred, because not shewn by whom, not by the Defendant himself : But the Court said, That being repaired, tho' by a Stranger, was a good Plea ; but in
Truth

Truth the Plaintiff had repaired it, and because 'twas a hard Case, the Court suffered him to wave his Demurrer, and take Issue not repaired in convenient Time, the House being uncovered. 2 *Keb.* 535. Covenant.

Vide 3 *Keb.* 40. The like Plea and Demurrer because the Time not put in certain, sed non allocatur, the first of *July* sufficient.

2^{dly}. Because not said who repaired, and p Cur' the House being rebuilt by the Plaintiff himself, and the Defendant's Executors and Administrators bound to repair it; the Plea is ill, and must shew who repaired it; but if the Plaintiff built it, this is no Excuse; and Judgment for the Plaintiff.

If a Lessee for Years covenanteth to leave Wood in as good Plight as it was at the Time of the Lease, and afterwards the Trees are over-turned by a Tempest, he may plead this Matter in Bar, and it shall discharge him of his Covenant, quia impotentia excusat Regem. 1 *Co. Shelley's Case*, 40 *Ed.* 3. 6. Bar by Tempest. and good.

The Covenant was upon a Charter-party, That in Consideration of a certain Sum of Money agreed to be paid to the Defendant for Freight of such a Ship, that he should make such a Voyage, and bear all Losses and Damages which should befall the Ship or Merchandizes in her, excepting only Perils of the Sea: And the Plaintiff declared that the Defendant had not performed his Agreement. Defendant pleaded, that in making his Voyage upon the Sea, the Ship was taken p quosdam ignot homin' bellic', whereby he was hinder'd in making of the Voyage according to his Agreement. Plaintiff demurred. In this Case it was holden, Covenant on Charter-party. Perils of the Sea excepted. Bar, that the Ship was taken by Pyrates.

Covenant. That Pirates are Perils of the Sea; and to that Purpose a Certificate was read that they were so esteemed amongst Merchants; wherefore it was holden that the Plea in Bar was good; *Styles 132. Pickering and Barkley's Case.*

Breach for Non-payment of Rent.

Bar by Entry.

Repl' Def. re-entred, and ill.

Bar good.

Upon a Covenant in an Indenture of Lease, the Breach was for Non-payment of Rent. Defendant pleaded in Bar, that the Plaintiff entered into Part of the Land demised before the Rent was due, for which the Action was brought, and so had suspended his Rent. Plaintiff replied, the Defendant did re-enter, and so was possessed as in his former Estate. And it was held ill by the Court, because the Plaintiff did not shew that the Defendant continued the Possession till the Rent grew due, but only that he possessed in his former Right; but the Plea in Bar was a good Plea, and Judgment against the Plaintiff, *quod nil capiat per Willam*; *Styles 243. Page and Parr's Case.*

Vide 3 Keb. 358. In Covenant, Breach for not repairing. Defendant pleads Entry into Part, and building, &c. Plaintiff demurred.

Bar by Assignment before Rent arrear.

In Covenant against Defendants, Executors to C. Lessee for Rent in Arrear in the Defendants' Time. Defendants plead Assignment before Rent Arrear, Plaintiff demurred — *Per Cur'*, tho' Debt may be in the *debit & detinet* on the Executors Possession, and then such Assignment is a good Plea. *Contra* on express Covenant where the Executor is charged as such; but if charged as Assignee only, then the Plea were good of Assignment before Rent Arrear; and here Judgment must be *de bonis Testatoris*, therefore Judgment for the Plaintiff, *nisi*. 3 *Keb. 367.*

A Covenant that he is seised of a good Estate in Fee, the Plaintiff takes Issue by Re-plication, that he was not seised of a good Estate in Fee. Defendant rejoins, that he was seised of as good an Estate as Sir J. W. who granted it to him had, which is nothing to the Purpose; for he must answer directly, and without Limitation, and Judgment *pro Querente*, nisi. 1 *Reb* 95.

In Covenant, That H. will carry so many Men to *Jamaica* as the Defend' should bring, not exceeding 180, in Consideration whereof the Defendant promised five Pounds a Head: The Plaintiff said he carried 160, and the Defendant brought no more; the Defendant saith he brought 180, and none were ready to receive them in the Ship; Judgment for the Plaintiff, nisi. 1 *Reb* 100.

The Plaintiff covenants, That if the Defendant would pay Forty Pounds he would Convey as the Counsel of the Defendant should advise. And in Action of Covenant for the Money, the Defendant pleaded, That the Plaintiff did not convey as the Counsel did advise, which *per Curiam* is naught, without particular shewing the Manner, and what the Counsel did advise. And,

2dly. These being mutual Covenants, cannot be pleaded in Bar one of another, which was assigned for Error. And Judgment affirmed, nisi. *Idem* 178. *Vide postea*.

In an Action of Covenant on Bottomree, That a Ship in the *Thames* should go a Voyage to *A. in Spain*, & non directe vel indirecte debiaret: The Defendant pleads general Performance; and on Demurrer, Exception

Covenant.
Vide antea.
Def. must answer directly without Limitation.

Bar, that he carried 160 Men, & Plaintiff brought no more.

Repl', he brought 180 Men.

That the Plaintiff did not convey as Counsel advised, is ill.

Mutual Covenants, one cannot be pleaded in Bar of another.

Negative Covenant. Bar by Performance generally.

Covenant, that the Plea was ill, it being a Negative Covenant, to which the Court inclined; but if the Covenant were entire, and had been only to proceed directly to *A. &c.* it had been a sufficient Plea; *Idem* 334.

Non locavit
no Plea on a
Lease of a
Quarry by
Indenture.

In an Action of Covenant on Demise of a Freestone Quarry to the Defendant, the Defendant covenants not to dig in any other Part of the Common; and Breach being assigned in digging, Defendant pleads *non locavit* the Quarry *per*; to which the Plaintiff demurs, the Demise being by Indenture, and the Covenant Collateral; The Plea was held frivolous; And Judgment for the Plaintiff, *nisi*. *Idem* 751.

Departure.

In an Action of Covenant for not repairing a House, the Defendant pleads Performance, and after rejoins, that he was ousted by a Stranger; which, *per Curiam*, on Demurrer of the Plaintiff, is a Departure. Judgment for the Plaintiff, *nisi*. *Idem* 662.

Utlary plea-
ded.

Upon Covenant to pay Money, *Utlary* a good Bar. *Idem* 324.

Non iniregit Conventionem is tried, where the House not repaired is. *Idem* 575.

Breach for
Non pay-
ment of
Money on
Assurance on
a Day as De-
fendants
Counsel
should ad-
vise.

In an Action of Covenant on Articles of Agreement, whereby the Plaintiff covenanted to make an Assurance by a Day of Lands, as the Counsel of the Defendant shall advise; and on perfecting thereof, the Defendant is to pay 300 *l.* and 300 *l.* more generally within three Months when demanded: And now Breach being assigned in Non-payment of the whole, the Defendant pleads, the Plaintiff had no Estate which he could convey; To which the Plaintiff demurred, in regard this Payment

Bar.
That the
Plaintiff had
no Estate.

is Collateral, and the latter is general, with Covenant. Reference to the former. But *per Cur'*, The first depending on the Assurance, the latter must be so, that is subsequent: So if no Assurance, nothing is to be paid, and so the Plea of the Defendant is good, altho' the Plaintiff averreth he was always ready to perfect it, and that the Defendant never tendred any, nor hath paid, &c. *præter Twisden*, who conceived it is at the Defendant's Peril to cause an Assurance; and if the Plaintiff refuseth for to convey by Fine, &c. then he is liable, else not. But *per Curiam*, This is good in Action by the Defendant for Non-assurance; but here the Action is for Money, and so the Defendant hath Election to plead as here, or that he tendred Special Conveyance by Advice, and the Plaintiff refused. Judgment for the Defendant, *Nisi. Idem pag. 734.*

H. prayed a Repleader in an Action of Another Covenant for *Non-payment* of Freight: The Collateral Defendant pleaded another Covenant in Bar, Covenant pleaded in Bar to a Covenant for Nonpayment of Freight. That the Ship was to be brought as near the City of *London* as could be; on which the Plaintiff took Issue, and Verdict for the Defendant: In which Case the Plea being insufficient, the Defendant never can have Judgment: As Payment pleaded to a single Bill found for the Defendant, 5 Co. 43. *Nichols, Det. Br. 8.* And in this Case the Freight is to be paid on Discharge of the Ship, and another Covenant to discharge as near as could be, &c: which are Collateral Covenants. The Court agreed the Difference. *Sed Adjournatur. Idem pag. 763.*

Covenant. In an Action of Covenant for Rent Arrear General Release of all Demands, (which was made by Award on Collateral Differences between them) made after the Covenant and before the Rent due: To which the Plaintiff demurred, for that the Cause of the Release was particular and collateral. And Judgment for the Plaintiff nisi. *Idem* pag. 499, 510, 511.

Vide 1 Inst. 510. 2 Cro. 107, 486. Mo. 544. Et vide *Bridgman* 124 & 20. *Aff.* 5.

See 3 *Keble* 814. Release of all Demands, Demurrer because the Release is particular, and bars not for a Covenant broken; so after Cause of Action by Battery. Release of all Demands in personal Estate no Bar. 3 *Keb.* 418. A Covenant broken is not discharged by Release to Executor of all Demands of personal Estate of the Testator.

Custom of London to turn over an Apprentice.

Moved in Arrest of Judgment.

In an Action of Covenant it was moved in Arrest of Judgment (shewing the Custom of London, to turn over an Apprentice from one to another; and that such, to whom such Apprentice is turned, may have an Action of Covenant) upon Special Issues, on the several Breaches assigned, and Verdict for the Plaintiff. First, That the Breach *quod abstraxit se a servitio* so many Nights, and during that Time did not serve him: Which *per Curiam* being found against him is good enough. Secondly, That he did not serve according to his Covenants, whereas no Covenant was made with the Plaintiff; yet if this second Covenant had been omitted, it had been good enough, and the Conclusion, and *sic non tenuit Conven-* tum made with the Plaintiff, is as well as could

could be; Judgment for the Plaintiff. 1 *Keb. Covenant.* pag. 250.

Note, a Covenant to instruct an Apprentice, binds Executors. *Idem* 761.

In an Action of Covenant of Apprenticeship, the Defendant pleaded Infancy; The Plaintiff replies by Custom of London; to which the Defendant demurred: Some held it a Departure, as *Pl. Com.* 105. *Hutton* 63. 1 *Inst.* 304. *Kelway* 76. 37 *H. 6.* 5. Others not, as 21 *H. 7.* 17. 3 *Cr.* 652. *Vide Moo.* 135. *Pl.* 280. *Godb.* 122. *Pl.* 143.

Some said the Count ought to have been on the Custom, it being the very Ground of the Action. 3 *Cr.* 653. *Pl.* 12. *Walker versus Nicholson.* *Winch* 63.

Others, that the Action is founded on the Covenant, not on the Custom, as 21 *Ed.* 4. 6. *Pl.* 17. *Br.* 42. *Infant Fitzh.* 2. & 5. *Eliz.* 4. *S.* 43. *b.* 1. Infant is not bound by Collateral Covenants, but only of Apprenticeship. 6 *H.* 7, 8. *Vide* 1 *Cr.* 159.

But at length the Court gave Leave to the Plaintiff (notwithstanding the Opinions) to discontinue his Action, and rather than hang up longer, begin *de novo*, and count on the Custom of London, that an Infant may bind himself Apprentice. *Idem* 376, 469, 512. *Vide Siderf.* 142. *Pl.* 19.

Covenant upon an Indenture of Apprenticeship, wherein the Defendant bound himself to serve the Plaintiff for seven Years. The Plaintiff sets forth the Custom of London, That any Person above 14 and under 21, unmarried, may bind himself Apprentice, &c. according to the Custom, and that the Master there- Breach a-
gainst Ap-
prentice up-
on Custom
of London.

Covenant. thereupon shall have *Tale remedium* against him, as if he were 21, and alledges that the Defendant did go away from his Service, *per quod* he lost his Service for the said Term, (which Term was not expired.) The Defendant pleads a frivolous Plea, [*viz.* that he tender'd his Return, *Absque hoc*, that he refused to serve, 2 *Keb.* 710, 687.] To which the Plaintiff demurs.

Heley, Tho' such a Covenant shall not bind an Infant, neither by Common Law, nor 5 *Eliz.* 1 Cr. 170. yet by this Custom it shall, in *Pasch.* 21 *fac. B. R. Cole versus Holme*; there was such an Action against an Apprentice; the Defendant pleaded Non-age, the Plaintiff replied the Custom of *London*, and that the Indenture of Apprenticeship was inrolled, as it ought to be, &c. And this was certified by the Recorder, Serjeant *Finch*, to be the Custom: And thereupon Judgment was against the Defendant.

Jones, The Custom ought to have been alledged, That he should have an Action of Covenant against him, which is not done here; and Customs shall be taken strictly, not by Implication. Moreover, the Plaintiff declares for a Loss not yet sustained, the Term not being ended.

Cur', The Custom is sufficiently alledged, to give and make good an Action of Covenant. *Tale remedium* implies it, These Words are applicable to all Things relating to this Matter, *viz.* That the Master may correct him, may go to a Justice of Peace; And also may have an Action of Covenant against him, as against a Man of full Age. And tho' by Common

Vid. Hutt. 63.
4 *Winch.*
63. 4.

Law

Law or the Statute, his Covenant shall not bind him; yet by the Custom it shall. But *Twisden* desired to see *Offley's* Reports. As to the Declaring for the Loss of the Term, Part whereof is unexpired, tho' it has been adjudged naught after a Verdict; yet in this Case, which is upon Demurrer, it may be helped for the Plaintiff may take Damages for the Departure only, not the Loss of serving the Term, and then it will be well enough. Judgment *Nisi*, &c. *Mod. Rep. pag. 271.*

Action of Covenant brought by an Infant *per Guardian suum*, for that the Plaintiff being bound Apprentice to the Defendant by Indenture, &c. the Defendant did not keep, maintain, educate, and teach him in his Trade of a Draper as he ought, but turned him away. The Defendant pleads, that he was a Citizen and Freeman of *Bristol*, and that at the General Sessions of the Peace there held, there was an Order that he should be discharged of the Plaintiff for his disorderly Living, and Beating his Master and Mistress, and that this Order was inrolled by the Clerk of the Peace, as it ought to be, &c. To which the Plaintiff demurred.

Breach by
Apprentice
against the
Master.

Bar,
That he was
discharged
by Order of
Sessions.

It was said for the Plaintiff, that the Statute of 5 *Eliz. cap. 4.* doth not give the Justices, &c. any Power to discharge a Master of his Apprentice, but only to minister due Correction and Punishment to him.

Cur', That hath been over-ruled here, the Justices, &c. have the same Power of discharging upon Complaint of the Master, as upon Complaint of the Apprentice. Else that Master would be in a most ill Case, that was troubled

Covenant. bled with a bad Apprentice; for he could by no means get rid of him. Secondly, It was urged on the Plaintiff's Behalf, that he had not, for ought that appears any Notice, or Summons to come and make his Defence. *Vide* II Co. 99. *Baggs Case*: And this very Statute speaks of the Appearance of the Party, and the hearing the Matter before the Justice, &c.

Sanders pro Defendente. In this Case the Justices are Judges, and it being pleaded that such a Judgment was given, that is enough; and it shall be intended all was regular.

Twisden and Rainsford: That which we doubt is, Whether the Defendant ought not to have gone to one Justice, &c. first, as the Statute directs, that he might take Order and Direction in it; and then if he could not compound and agree it, he might have applied himself to the Sessions: For the Statute intended there should be, if possible, a Compromise in private; and the Power of the Session is conditional, (*viz.*) if the one Justice cannot end it. In Case of a Bastard-Child they cannot go to the Sessions *p saltum*; and we doubt they cannot in this Case: It is a new Case. And then the Matter will be whether this ought to be set down in the Pleading. *Adjournatur, Mod. Rep. p. 286, 287.*

Repleader prayed in Covenant: Breach, That the Defendant was not seised in Fee, *Et sic conventionem fregit, &c.* Defendant pleads, That he did not break his Covenant. Repl', That he did break his Covenant; whereas it should have been, That the Defendant was not seised in Fee. At length the Court agreed, that the Matter and Substance being tried, it

is aided as an unformal Issue within 32 H. 8. Covenant. Unformal Issue aided. *Non infregit Conventionem.*
Vide 2 Keb. pag. 10, 13, 47, 51.
 Covenant to pay 30*l.* when raised; *Non infregit conventionem*, ill Plea on Demurrer. 2 *Keb.* 341.

In Covenant for Rent on *Nil debet* pleaded, the Plaintiff demurr'd specially; because albeit the Covenant doth not alter the Rent, yet *Nil debet* cannot be pleaded. But the Court said, it was well enough. *Adjornatur Idem* 347. *Nil debet*, and Demurrer.

In an Action of Covenant to repair and so leave the Premises: Breach in 60 Rood, &c. Defendant pleads, That one Barn was pull'd down by the Plaintiff's Consent; and as to the rest, That they were repair'd, and so left. To which the Plaintiff demurred generally, the particular Breach not answered. And *per Hales*, He should either have taken Issue *reparavit* the Particulars, or say they were not in *de casu modo & forma*; they conceived this but Form: But the Parties agreed to take Issue in one of the Points. 2 *Keb.* 798. Breach in not Repairing.

Covenant to enjoy against lawful Impediment, is broken by Entry of one *habens jus*. 3 *Keb.* 40 So by one *Clamans jus*, and not said *legale*. *Idem* 266. Entry *Clamans titulum*, not said by Stranger, and since the Covenant no Breach. *Idem* 246.

Covenants on Articles, to bear Proportion to repair Sea Banks. Defendant pleads, he had no Land as Heir since the Death of the Testator. Plaintiff demurs, and Judgment for the Plaintiff, the Suit being as Executor, and not as Heir. 3 *Keb.* 128. Defendant answers as Heir, being Executor.

In

Covenant.
Covenant
for quiet En-
joyment
broke by
Lease with-
out Entry.

In Covenant on Indenture 8 Octob. 1652. of Demise to hold for 99 Years after the Death of Z. K. if three Lives so long live Defendant pleads, That the Plaintiff *potuit uti* and enjoy the Premises without the Let of the Lessor. To which the Plaintiff replies, That the Lands are and were Dutchy Lands, and that the King for Fine and Rent had devised the Reversion to H. for 99 Years if the three Lives live, by Reason whereof he could not enjoy. Defendant demurs, and Judgment for the Plaintiff: All this being confessed by the Demurrer, the Plaintiff needs not shew that he enter'd, but the Defendant should plead it. 3 Keb. 162, 202.

Covenant on two Deeds of former Husband of the Defendant's Wife, to cut 12 of the best Trees, whereby the Plaintiff hath Election: And Breach is assigned, That before the Time the Defendant cuts down some of the Trees. Defendant saith, There were sufficient standing. To which the Plaintiff demurred. Vide 3 Keb. 477.

Release.

Covenant, no Duty or Cause of Action till broken; and therefore not discharged by Release of Actions. *Allen's Rep.* 39. Vide *antea*.

To perform
Indentures
and save
harmless.

Covenant to perform certain Indentures, and to save the Plaintiff harmless: He cannot plead generally Performance of Covenants, because some may be in the negative; and also he ought to shew how he saved him harmless: *Allen* 72.

Lease
naught.

If the Lease is not good, there's no Covenant nor Breach. *Nelv.* 18, 19.

That

That ~~Warrantia~~ Charte depending, is Covenant. no Bar in Covenant, because personal. *Yelv.* Other Action depending. 139.

Concord certain and executed, pleaded to Concord. Covenant is good. *Yelv.* 125. *Vide antea.*

Non-performance of a Reciprocal Covenant. Reciprocal Covenant. no Bar to an Action for the Breach of another Covenant. *Jones's Rep.* 216. *Vide antea.*

If Covenant be for further Assurance, it Bar, That the seems to be a good Plea, that the Fine in another Assurance tender'd, comprized more than was conveyed. 1 *Rolls* 103. Fine comprized more than conveyed.

If it be to levy a Fine of all the Messuages and Lands in D. and an Action is brought, for not levying a Fine, which is tender'd of more than the Covenantor had at the Time, *Simile.* Fine tender'd of more, &c. 'tis a good Bar that the Fine was of two Messuages, and he had only one at the Time of the Fine. 1 *Rolls* 117, 118.

In Covenant the Defendant pleaded the Non-resi- Statute of 13 *Eliz. cap.* 10. and 14 *Eliz. cap.* dence. 11. concerning Non-residence.

See more in *Tit. Debt*, at the Beginning.

Note, That all Covenants between the Lessor and Lessee, are Covenants in Law, Express Covenants. *Vaughan's Rep.* 118.

An Express Covenant, restrains the General Covenant in Law. *Idem.* 126.

Where the Covenant is to enjoy against one or more particular Man, and where against all Men. *Idem* 127.

By a Covenant in Law the Lessee is to enjoy his Term against the lawful Entry or Interruption

Covenant. terruption of any Man; but not against Tortious Entries, because the Lessee hath his proper Remedy against the Wrong Doers. *Idem* 118, 119.

If a Stranger, who hath no Right, outs the Lessee, he shall not bring Covenant against the Lessor, because he hath Remedy by Action against the Stranger: But if he enter by elder Title, then he shall have Covenant, because he hath no other Remedy. *Idem* 119, 120.

Tho' the Covenant is, That the Lessee shall enjoy against all Persons; yet he shall not have Covenant against the Lessor, unless he be legally outed. *Idem* 119, 120, 121, 123.

The Law will never adjudge that a Man covenants against the wrongful Acts of Strangers, except the Words are full and expresse. *Idem* 121.

When the Covenant is to enjoy against all Men, the Covenant is not expressly to enjoy against tortious Acts, neither will the Law so interpret it. *Idem* 123, 125.

What Collateral Matters shall be implied upon a Covenant. *Vide* 1 *Ventr. Rep.* pag. 26, 44, 45.

Tho' a Covenant be made only to a Man, his Heirs and Assigns, yet if a Breach be in his Life time, his Executors may bring the Action for Damages. *Idem* 176.

That a Covenant for quiet Enjoyment may bind, notwithstanding a subsequent Act of Parliament to alter the Title. *Idem* 175, 176.

In an Action of Covenant the Defendant cannot plead, That the Plaintiff *tempore quo nihil habuit in tenementis*; tho' such

such Plea in an Action of Debt for Rent is good. 2 *Vent. Rep.* 95.

Covenant to repair a House, if the Lessee comes without Licence after the Term ended to repair the House he is a Trespasser; 2 *Rolls* 250.

Note, The Difference between Covenants in gross, and Covenants grounded upon a Lease: Covenants having a Lease for their Foundation, are within the *Proviso* of the Statute of 13 *Eliz.* but not in gross. 2 *Rolls* 401.

Of Pleas after the last Continuance.

WE mentioned before something concerning Pleas after the last Continuance; and therefore as a Conclusion to this Part, will make an End of that Matter.

These Pleas are sometimes in Abatement, and sometimes in Bar, Dilatory or Peremptory.

And first, note, that it is said, That a Man shall have but one Plea after the last Continuance. 4 *H. 7. fol. 8.* 38 *H. 6. fol. 33.* and the Reason is, because the Plaintiff shall not be delayed *ad infinitum*; 16 *H. 7. 11.*

What Pleas a Man may have after the last Continuance.

See *Bro. tit. Continuance.* 5, 21, 41, 45, 46, 59.

And by 9 *H. 7. fol. 8.* a Man shall not have a Plea after the last Continuance, unless such Pleas were not in Being at the Time of the first Plea; for otherwise it is not after the last Continuance.

At the *Nisi Prius* a Man may plead a Plea after the last Continuance, 28 H. 6. 1. By the 16 Ed. 4 fol. 5. a Man may plead a Plea after the last Continuance, after Issue joined, and in another Term till Verdict; but not Mean between *Nisi Prius*, and the Day in Bench.

And by 21 H. 6. fol. 10. Bro. tit. *four. &c.* 31. tit. *Continuance*, 13, 27, 42, 76. the Day of *Nisi Prius*, and Day in Bank are all one; so that a Release made betwixt these Days cannot be pleaded in Bank; but it seems that a Release made between the Day of the *Venire Facias* return'd, and the Writ of *Nisi Prius* awarded, and the Day of the *Nisi Prius* may be pleaded at the Day of the *Nisi Prius*, but not after the Verdict.

What Pleas
he may not.

By Brook, in his Abridgment, tit. *Continuance*, 61, 83: after the Inquest is awarded, to enquire of Damages, the Defendant cannot plead a Plea after the last Continuance, because he hath no Day in Court to plead. *Vide* 1 H. 7. 21.

So after the Inquest taken by Default, and before Judgment, the Defendant came and pleaded an Arbitrament made after the last Continuance: And by the Opinion of the Court, he had no Day in Court to plead this Plea; and 'twas said, That he could plead no Plea in such Case, but as *Amicus Curie*, and of Matter apparent he shall be received, otherwise he must resort to his *Audita Querela*; 28 H. 7. 33. Bro. tit. *Continuance*, 38.

For Default
of Jurors.

But if the Jury remain for Default of Jurors, the Defendant may plead a Release, &c. at the Day in Bank after the last Continuance, altho' he did not offer it at the *Nisi Prius*. Other-
wise

wife if the Jury had been taken at the, *Nisi Prius*; 22 H. 6. 1 b. *Bro. ib.* 30.

If it be pleaded at the *Nisi Prius*, the Court Plead at will record the Plea, and discharge the In- the *Nisi Prius*. quest, and give Day to the Parties in Bank; *Ibid.* 34.

In Debt, after Issue joined, the Defendant at the *Nisi Prius* pleaded Payment of Part, after the latter Continuance in Abatement; and the Jury being discharg'd, and the Plea adjourn'd in Bank, the Plaintiff had Judgment to recover his Debt, for that no Place of Payment was pleaded, and because after Issue join'd no *Respondeas ouster* can be awarded; 5 Ed. 4. 139. *Vide Allen's Rep.* 66. *Vide antea.* By Payment of Part.

It is also to be observ'd, That Pleas after the last Continuance ought to be certainly pleaded. *Vide Pl. 1 Com.* 33. b. The Pleas must be certain.

In a Writ of Entry in the *Post*, the Tenant may plead Entry of the Demandant after the last Continuance: And the same Law is of *Misnosmer.* 2 H. 6. 13. *Vide postea.* By Entry Misnosmer.

In a Writ of *Dower* of three Manors, it was pleaded in Abatement, That the Demandant enter'd into Parcel, after the last Continuance: By this Plea the entire Writ is abated. *Vide 6 E. 6. Dyer* 76. b. *Vide postea.* In Dower.

Et vide 8 Ed. 4. fol. 9. Where a Man plead- ed Death of the Defendant hanging the Writ and said, he shall not plead that after the last Continuance; for that by this the Writ is abated in Deed. Contrary of a Plea which proves the Writ abateable. By Death *pendenti brevi.*

Per Curiam, the Defendant may not plead, That the Plaintiff was made a Bishop pending the Writ, or that the Wife took a Husband Plea must be after the last Continuance

Exception
by Death.

pending the Writ, after a *Darrein Continuance*, if so be he does not plead it after the last Continuance, 23 H. 6. 10, 11. But it is otherwise of Death, or that the Plaintiff was a *Feme Covert* the Day of the Writ purchased; because that by such Pleas the Writ is abated *de facto*, and not only abateable. *Vide postea*.

By 34 H. 6 fol. 49. at the Day of *Nisi Prius* the Defendant pleads to the Writ, That one of the Plaintiffs was dead after the last Continuance at D. in the County of D. Judgment of the Writ, and the Plea recorded, and the Matter adjourned, and had that Plea. *Vide* 14 H. 6. fol. 9.

Not to Per-
son only,
but such as
may be ei-
ther to the
Action or
Person.

By the better Opinion, after the last Continuance one may plead, That the Plaintiff was an Alien born, &c. But he cannot plead Matters to the Person only: (But such Pleas may be pleaded to the Person, or Action, at the Pleasure of the Party; and after a Continuance one may plead Pleas in which he may conclude Judgment *si Recor*), but not Pleas to the Person. 32 H. 6. 23.

Quarto die.

And 28 H. 6. fol. 1. where the Parties and Jury appear at the 4th Day in the *Common-Bench*, and are adjourn'd: At another Day a Man may plead a Plea after the last Continuance.

Must be after
the last Con-
tinuance.

A *Præcipe* was brought by a Woman; the Tenant tenders his Law of Non-Summons, and at the Day was essoin'd, and at the Day said, That the Demandant took a Husband after the Law tender'd; and for that, That he did not say, after the last Continuance (that is, after the Essoin) it was held no Plea. 38 Ed. 3. fol. 5.

In

In a *Precepto quod reddat* the Tenant vouch'd and the Demandant counter-pleaded the Voucher by the Statute, and the Tenant would not attend; but he said, the Demandant was outlaw'd, after the last Continuance in Debt, and produced the Record. 21 Ed. 4. 54. *quod Nota*.

Tenant admitted to plead Outlawry.

If the Demandant enter before Issue, the Defendant may plead in Abatement of the Writ, That he entered pending the Writ: But if he enter'd after Issue, then he shall say, That he enter'd after the last Continuance, 26 H. 8. 3 b.

Entry pleaded.

A Tenant by Receipt may plead an Entry pending the Writ, without saying after the last Continuance. Otherwise 'tis of him who was Party to the Suit; for the Tenant by Receipt is as a new Tenant. 21 H. 6. 47, 48, 49, &c.

Tenant by Receipt.

If at the fourth Day the Parties are adjourn'd to another Day, in such Case, al quarto die, upon a Special Entry made in the one Case, and the other, the Defendant may cast a Protection, bearing Date after the Day, and so he may plead a Plea after the last Continuance. 28 H. 6. 6.

Quarto die,

Protection.

He that prays to be received, altho' he be received *de facto*, cannot plead, That the Demandant entered after the last Continuance, *per totam Curiam*. Otherwise 'tis of an Outlawry, Excommunication, Death, &c. And by the Chief Justice he may plead Matter in Abatement; and the same Law is of a Disseisor as to an Entry after the last Continuance. 32 H. 6. 2. But *quare* of Outlawry and Excommunication.

Received de facto.

By 31 H. 6. 10. if during the Time of Vacation a Person has Cause to have Aid of the Archbishop of York, so as he ought to have it of the Archbishop of Canterbury; in such Case (though after the last Continuance) another Archbishop of York is consecrated and install'd; yet the Person cannot have Aid of him, by the better Opinion; for that the Right which is perpetual is in the Metropolitan: Yet if Tenant for Life had Aid of the Reversioner, who dies, he shall have Aid of his Heir *de novo*; and so of the Successor of a Bishop. But if one had Aid of the Ordinary who dies, he shall not have Aid of the Metropolitan.

Defendant pleads a Release in Bar, which was not between the last Continuance and *Utas*, but after.

In Trespass, *Not guilty* being the Issue, the Jury appeared the first Day of *Hillary* Term, and the Defendant came and said, That the Inquest ought not to be taken; for that the Plaintiff had released him after the last Continuance. But because the Release was after the *Essoin*-Day of the *Utas*, and came not between the last Continuance and the *Utas*, the Plea was not allowed, but the Inquest was taken: But if it had been between, the Plea had been good. Yet the Form of the Pleading in this Manner was not good; for he ought to have said *Non*, and not, *This Inquest ought not to be taken, &c.* 20 Eliz. Dyer 361. *Sed vide postea* 461. where in Abatement at the Assizes, 'tis pleaded that the Justices ought not to proceed to take the Jury.

Essoin-Day the first Day of the Term.

Note, That the Day the Jury appeared was not properly the first Day of the Term, for the *Essoin*-Day is reckoned properly the

the first Day of the Term, which was *Octab Hil* Jan 20. and is the *Utas* or Eighth Day after the Feast of Saint *Hilary*, and the first Day of the Term when the Jury appeared was *Jan. 23.* being a Day of Grace given for Appearances. The Release was dated the 21st, which was *Monday*, next Day after the *Essoin* or Day in Court, and so not between the last Continuance *ante Octab in Hil*; for it ought to be *post ult Continuationem* & *ante Octab Hil*. See *Hutton* 95. 2 *Leon.* 10. See many Cases. 4 *Ed.* 4. 34 *H.* 6. 20.

Quare, If this had been by Continuance in the *King's-Bench*, whether it had not been otherwise, because the Day is certain; as *die Mercurii prox' post Octab Sed Hillarii, Ad quem diem, &c.* and then it seems the Date of the Release was well enough.

¶ **Q**uando, &c. Et dicit quod post ult' rimam continuacion' p'fici p'dia' videt' post Octab Sed Hillarii ult' p'te de quibus processus inde continuat' fuit hic usq; ad hunc diem scit ad Octab Sed Trinitat' tunc prox' sequen' & ante has Octab Sed Trin' p'dia' R. intravit in terram p'dia' cum p'ti & ipsam S. de reit'is ill' (&c.) expulit & amovit, & q'd idem R. inde est sc'tus in D'ico suo ut de feodo Et hoc paratus est verificare (&c.) Unde, &c. Vide plac. Gen. fol. i. bis.

That the Plaintiff enter'd after the last Continuance.

That the
Plaintiff was
made a Knt.

¶ **A**d quem diem Jur' inter partes
p̄dia' de p̄dia' p̄lito posit' fuit
inde inter eas in respon̄ hincq; ad hunc
diem scit̄ (Ec.) tunc xx' sequen̄ Et
modo hic ad hunc diem ven̄ tam p̄dia'
Quer' per C. W. Attoꝝ suum quam
p̄dia' Defend' per R. B. Attoꝝ suum
Et idem Defend' dicit quod p̄dia' Quer'
post Octab Sc Michis ult' p̄t̄ de quo
die loquela p̄dia' hic ad hunc diem ult'
continuat' fuit suscepit ordinem milita-
rem videt' apud W. in Com̄ M. & jam
miles existit Et hoc, Ec. Unde pet' judi-
cium de bz̄i p̄dia', Ec.

See *Vidian* 93. 3 *Brownl* 426, 188. Ep̄us
est fauus Archdep̄s. Co. Ent. 267.

That the
Plaintiff
took a Hus-
band after
the last Con-
tinuance,

¶ **E**t die quod post ultimam conti-
nuacionē p̄liti p̄dia' videt' post
Crastin̄ Animarum ult' p̄t̄ de quo die
loquela p̄dia' ult' continuat' fuit hincq;
ad hunc diem videt' Octab Sed Villar'
Et ante ad hunc diem scilicet decimo
die Decembris Anno (Ec.) apud R. in
Com' B. p̄dia' Maria cepit in Virum
quendam J. S. qui quidem J. S. ad-
huc superstes & in plena vita existit
videt' apud R. p̄dia' Et hoc (Ec.) Un-
de, Ec.

Note, A Defendant cannot take such Ad-
vantage by her own Act, but only against the
Plaintiff's Act.

Cassari non debet Quia dicit quod
post p̄dīa' Crastinū Aninū & ante p̄dīa'
Ogab Sed Hīl ipsa Maria non cepit
p̄dīa' J. S. in virum suum p̄c p̄dīa'
Maria allegabit Et hoc p̄t', &c.

V. de Cl. Gen. 4. 134. Thomps. 1.

Ad qm̄ diem coram Dño Rege apud
Westm̄ vend partes p̄dīa' per At-
tozū suos p̄dīa' Et p̄dīa' G. dicit quod
p̄dīa' S. per nomen (&c.) per quoddam
scriptum suum quod idem G. p̄fert hic
in Cur' eidem G. post iudiciū reddit'
videt die Martis proximo post quin-
denam Sancti Martini usq; quam qui-
dem quindenam Sed Martini loquet
p̄dīa' a p̄dīa' Ogab Sed Trinū ultimo
continuat fuit apud B. in Com L. p̄m̄
deliberat remisit relaxabit & omnino p
se & hered' suis impetuum quiet cla-
mabit p̄lat G. per Nomen G. H. de (&c.)
omnes executionē quorūcūq; iudicioz
in Cur' Dñi Regis vel alibi vsus ipsū
G. reddit' & omnimod' actiones p̄sonales
quas vsus ipsum G. unquam fuit seu
quobismodo in futur' here potuit ratione
quacūq; a principio mundi usq; diem
confectionis ejusdem scripti Et hoc pa-
rat est verificare, unde petit iudiciū si
p̄dīa' S. aliquam executionē vsus eum
de deho & dampnis p̄dīa' in hac parte
habere debeat &c.

*En Scire fac'
d'aver Exec'
sur vec' en det.
Bar per Releas
ap's le judgm.
prim. deliberat.*

Et

Repl.

*Qd' le Release
fuit fait per
dures in auter
lieu.*

Et p̄dix' S. dicit quod ipse ab Ere-
cutione debi & dampnorum p̄dix' in
hac parte hend' p aliqua pallegata pre-
cludi non debet quia dic quod idem S.
tempore confectio' scripti p̄dix' fuit im-
p̄sonat' p p̄dix' G. & alios de Cobina
sua apud D. in Com B. & ibm in pri-
sona detent' quousq; idem S. Scriptum
p̄dix' per vim & duriciam Imp̄sona-
menti illius p̄fat' G. fieri fecit sigillabit
& deliberabit Et hoc paratus est est verifi-
care unde petit iudiciu & execucionē p̄dix'
sibi in hac parte adjudicari, &c.

Rejoinder.

*Qd' fuit ad
largum.
Et Issue.*

Et p̄dix' G. dicit quod p̄dix' S. tem-
pore confectio' scripti p̄dix' fuit sui iu-
ris ad largum & extra quamlibet pri-
sonam & quod ipse scriptum illud ex-
mera & spontanea voluntate sua eide G.
sigillabit & deliberabit & non per vim
& duriciam imp̄sonamenti put p̄d S.
superius p̄litand' allegabit Et de hoc
pōd se super p̄riam Et p̄dix' S. similie
Nō p̄ec est hic B. quod venit fac, (&c.)
de vild de D. per quos, &c. Ad Recogit
super Sacrm suum si idem S. (tempore
confectio' cuiusdam script' relaxaco' qd
p̄dix' G. in Cur' nra coram nobis in
exoneraco' cuiusdam iudicii istius ip-
sum ad sectam ejusdem S. nuper in Cur'
nra ville R. in p̄lito debi p̄tulit) fuit
imp̄sonat' per eundem G. & alios de
Cobina sua in Castro W. in Com tuo &
in Prilona ibm detent' quousq; p̄dix' S.
Scriptum p̄dix' per vim & duriciam
imp̄ri-

imprisonamenti illius p̄fat' G. fieri fecit
 sigillabit & deliberabit p̄ut p̄dia' S.
 suppon' vel non, immo idem S. tempore
 confectiō scripti p̄dia' fuit sui iuris ad
 largum & extra quamlibet Prisonam
 quodq; idem S. scriptum illud ex mera
 & spontanea voluntate sua p̄fat' G. fecit
 sigillabit & deliberabit & non p̄ vim &
 duritiam imprisonmenti p̄ut idem G.
 suppon' Qui tam, &c.

Postea (Ec.) die (Ec.) quod p̄dia' S. *Verdict' sur
dures en des
sur obl.*
 tempore confectiō scripti infrasp̄ec fuit
 sui iuris ad largum & extra quamlibet
 prisonam & scriptum illud ex mera &
 spontanea voluntate sua p̄fat' G. fecit &
 non p̄ vim duritiam neque coherc̄ im-
 prisonamenti p̄out p̄dia' G. infra p̄li-
 tando allegabit Et Alid' dampn' oſſione
 detentōn' (Ec.)

¶ Postea continuat' inde p̄cess' inter
 partes p̄dia' de p̄lito p̄dia' per Jur' po-
 sit' inde inter eas in respectu hic usq; ad
 hunc diem scilicet (Ec.) tunc p̄r sequen'
 Et modo hic ad hunc diem ven' tam p̄re-
 dia' W. quam p̄dia' H. per Attozū suos
 p̄dia' Et super hoc idem H. relicta veri-
 ficatione sua p̄dia' per ipsum superius
 p̄fens die quod post ultimam continua-
 tiō p̄liti p̄dia' videt' post (Ec.) ulti-
 mum p̄terit' de quibus loquela p̄dia'
 continuata fuit hic usq; ad hunc diem
 scilicet (Ec.) & ante eandem quindenam
 Pasche videt' vicesimum quartum diem
 Januar' Anno (Ec.) p̄dia' W. per no-
 men

Aliter.
 Release
 pleaded af-
 ter the last
 Continu-
 ance.
 Issue relin-
 quish.

men (Ec.) per quoddam scriptum suum relaxationis factum apud N. pdia' quod idem H. sigillo pdia' W. signat hic in Cur' pferat cujus dat' est eidem die & anno remisit relaxabit & omnino de & p se hered' & executor' suis imperpetuum quiet' & clam' eidem H. per nomen (Ec.) omnes & omnimod' actiones tam reales quam personal' sect' querel' calumnia sive demand' que & quas idem W. vsus ipsum H. unquam fuit seu quovismodo extunc here potuit ratione vel causa quacumq' ab origine mundi ad diem consecutionis ejusdem scripti relaxationis Et hoc parat' est verificare unde petit iudiciu' si pdia' W. action' Ec.

Issue Non est factum.

Release
pleaded in
Abatement
at the Affi-
zes after Is-
sue join'd.

Et pdia' C. in ppria persona sua veni & dicit quod pdia' Justic' Dni Regis hic ad capcon' Jur' pdia' inter ipsum C. & p'fat' W. procedere non debent quia die quod post duodecesimum diem Februar' ult' p'terit' de quo die Jurat' p'ed' int' partes p'ed' continuat fuit & ante hunc diem [scilicet diem de Affize] scit' decimo die Martii anno (Ec.) apud, Ec. p'ed' W. per nomen, (Ec.) remisit relaxabit, (Ec.) Et hoc, (Ec.) unde petit iudiciu' Et quod Justic' p'ed' ad capcon' Jur' p'ed' ulterius procedere nollunt.

This may serve for any of the other at the Affizes, *mutatis mutandis*, in Abatement or Bar.

Vide

Vide And. Rep. 155. Rast. Ent. 549. 1 Brown. 106. 13.

Vide Winch. Ent. 714. als 824. in Quare Imp' ad Sec' Regis Cū Rex post ult Cont Ven' fa' & ante diem Māz' relaxabit Def' & pardonabit Simoniam.

M. Di. prius acquietant p'litat', Rast. Ent. 180.

Per Concordiam p'litat', Rast. 122. Thomps. 3. 22.

Per Arbitriū p'litat', Rast. Ent. 498.

Death of one of the Defendants pleaded after the last Continuance.

Et p'ed' defend' p' M. B. Attorū suū ven' Et p'ed' C. non ven' Et super hoc p'ed' defend' dicit quod post ult' Continuatōn placiti p'ed' scilicet post 15 Pasche ult' p'et'it de quo die loquela p'ed' ult' continuat' fuit hic usq' ad diem scilicet in C'ō Sec' Trin' tunc p' seque' & ante eundem diem scilicet decimo die Maii ult' p'et'it p'ed' C. apud M. p'ed' obiit Et per quod null' p'ocess' nec aliquid aliud in p'lito p'ed' ulterius vers' p'efat' C. fiat Et quia p'ed' J. & R. hoc non dedic' Ideo null' p'ocess' nec aliquid aliud in p'lito p'ed' v'lus p'efat' C. fiat, &c.

Qu. If not rather, & ante eund' Crm' Trin'.

Vide antea Tit. Abatement.

Vide 2 Bro. 111. Winch. Ent. 818. 1 Mod. Ent. 308. Def. obiit 1 Bro. 348. Rast. Ent. 108, 340. 1 Towns. Judg. 140.

Tencens

Tenens in particon obiit post *De* *fa*
agard. Rob. Ent. 342. Ast. 331.

Detens obiit, Hern. 412.

Quer' obiit post ult' Cont, Cl. Ast. 6.
Rast. 226. 3 Brownl. 130.

Ur' quer' obiit in Quare Imp' &c.
Winch. Ent. 771. Vir obiit in Quare Imp'
556.

Patronus Def. obiit, Co. Ent. 517.

Und Def' obiit post veredict' & quer' non
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